

LEASE AGREEMENT  
CLARKSBURG VILLAGE PHASE III

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## CLARKSBURG VILLAGE PHASE III LEASE AGREEMENT

This Lease Agreement ("Lease") between CLARKSBURG VILLAGE CENTER, LLC, a Maryland limited liability company ("Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland, through the Department of Liquor Control ("County"), the Landlord and the County collectively the "Parties" is dated September 24, 2012.

### 1. LEASE OF PREMISES.

In consideration of the Rent (as defined in Article 9 of this Lease) to be paid by Tenant and the provisions of this Lease, and for and in consideration of the mutual covenants and agreements herein contained, Landlord leases to Tenant and Tenant leases from Landlord, for the Term, the Premises shown by diagonal lines on the plan attached hereto as Exhibit A, and further described at Section 3.i. The Premises are located within the Shopping Center described in Section 3.n. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord and other tenants, subtenants and invitees of the Shopping Center, to use of the Common Areas (as defined at Section 3.c.).

### 2. LEASE REVIEW, OBLIGATIONS OF LANDLORD AND TENANT.

Landlord and Tenant acknowledge and agree that each has the responsibility to personally review and approve the contents of this Lease before the Lease is signed.

### 3. DEFINITIONS.

As used in this Lease, the following terms have the following meanings:

- a. *Annual Percentage Rental.* Intentionally Deleted.
- b. *Commencement Date:* The date of this Lease, as dated by Landlord upon the full execution of this Lease by the Parties to this Lease.
- c. *Common Areas:* All areas, structural portions, facilities and equipment of the Shopping Center outside the Premises and the premises of other tenants, but within the exterior boundaries of the Shopping Center or any off-site

facilities which serve the Shopping Center, that are provided and designated by Landlord from time to time for the general use, benefit and/or convenience of Tenant and/or other tenants of the Shopping Center and/or their respective authorized representatives and invitees. Common Areas include, without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, public restrooms, stairways, utility rooms, plazas, throughways, loading areas, parking areas, and roads, all as generally shown on the plan attached hereto as Exhibit A. Landlord shall have the right to regulate or restrict the use of the Common Areas in its sole and exclusive discretion, provided, however, that none of the restrictions or regulations shall materially adversely interfere with access to or from the Premises, or with the visibility of the storefront sign on the Premises from, the proximate portion of the Common Areas or reduce the parking facilities immediately adjacent to the Premises below the minimum parking required by applicable codes.

d. *Landlord's Mailing Address:* Clarksburg Village Center, LLC c/o Lauren Bauer, Elm Street Development, 1355 Beverly Rd. Suite 240, McLean, VA 22101.

e. *Tenant's Mailing Address:* Montgomery County, Maryland, Department of Liquor Control, 16650 Crabbs Branch Way, Rockville, MD 20855, Attn: Director, and

Montgomery County, Department of General Services, Office of Real Estate, 101 Monroe Street, 9th Floor, Rockville, Maryland 20850, Attn: Director of Real Estate

With a copy that does not constitute a notice: Office of the County Attorney for Montgomery County Maryland, 101 Monroe Street, 3rd Floor, Rockville, Maryland 20850, Attn: County Attorney

f. *Minimum Annual Rent (initial) (Section 9.1):* For the Initial Partial Year and the first Rental Year of the Term, the Minimum Annual Rent shall be \$42.00 per square foot of Tenant's Floor Area (as defined herein), \$258,846.00 annually, payable in twelve (12) equal monthly installments of \$21,570.50.

g. *Operating Hours:* From 10:00 a.m. until 9:00 p.m., Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, and from 12:00 noon until 6:00 p.m. on Sunday; provided, however, that Tenant shall have the right to not open its business on either Monday or Tuesday of each week and on Easter Sunday, Thanksgiving Day and December 25 and January 1st of each Rental Year

during the Term, and in the event any applicable laws shall require the operation of its business during hours other than as stated herein above Tenant shall at all times comply with and operate its business in compliance with applicable laws.

h. *Anticipated Possession Date and Tenant's Tentative Commencement Date* (as defined in Section 7).

i. *Premises*: That portion of the Shopping Center containing approximately 6,163 leasable square feet of Retail Areas Floor Area, shown by the shaded area on Exhibit A, located in the Shopping Center and designated space C-1.

j. *Rent Commencement Date*: The earlier of (i) one hundred twenty (120) days after the Anticipated Delivery of Possession Date (as defined in Section 7) or (ii) the date Tenant opens for business in the Premises, but in no event shall the Rent Commencement Date occur later than October 15, 2013.

k. *Rental Year*: For all purposes of this Lease the term "Rental Year" shall refer to the period of twelve (12) consecutive calendar months commencing on July 1 and ending on June 30; provided however, the period commencing on the Rent Commencement Date and ending on June 30 immediately following the Rent Commencement Date shall be deemed a partial Rental Year for purposes of this Lease and is herein referred to as the "Initial Partial Year".

l. *Retail Areas Floor Area*: The aggregate number of square feet of leasable floor area in and about the retail areas, as determined by Landlord's architect, which, with respect to any such floor area which has been leased to any rent-paying tenant, shall be determined in accordance with the provisions of any lease applicable thereto and which, with respect to any such floor area not so leased, shall consist of all such leasable floor area in the retail areas designed for the exclusive use and occupancy of rent-paying tenants, which shall exclude Common Areas and areas used for management and promotion offices.

m. *Security Deposit (Article 36)*: None.

n. *Shopping Center*: That certain tract or tracts of real property (the "Property") located in the City of Clarksburg, State of Maryland and described on Exhibit A, the buildings and other improvements located thereon, including the building of which the Premises is a part (the "Building") and all Common Areas (as defined in this Lease) located on the Property. The Shopping Center is known as Clarksburg Village Center.

The Shopping Center is subject to certain Matters of Record (as herein defined). The existing Matters of Record are more particularly described in Exhibit I attached to this Lease. Furthermore, the Shopping Center is subject to certain "Prohibited Uses" and "Exclusives and Restrictions" as more particularly described in Exhibit J and Exhibit K, respectively, attached to this Lease. The Matters of Record, Prohibited Uses, and Exclusives and Restrictions are herein collectively referred to as the "Permitted Encumbrances". This Lease is and shall be subject and subordinate to the Permitted Encumbrances and Tenant covenants and agrees not to violate the Permitted Encumbrances. Notwithstanding the foregoing, Tenant shall be permitted to operate a Montgomery County Department of Liquor Control branch location.

o. *Rental Adjustment Date (Section 9.2):* The first day of each Rental Year during the Term (including any exercised Renewal Periods as defined in Section 40 of this Lease).

p. *Tenant's Floor Area:* The aggregate number of square feet of leasable floor area in that portion of the Shopping Center constituting the Premises, which shall be measured (a) with respect to the front and rear width thereof, from the exterior face of the adjacent exterior or corridor wall or, if none, to the center of the demising partitions, and (b) with respect to the depth thereof, from the front lease line (as designated on the Lease Outline Drawing which is included in Exhibit A attached hereto and made a part hereof with respect to the premises or pursuant to other leases, with respect to premises other than the Premises) to the exterior face of the rear exterior wall or corridor wall or, if neither, to the center of the rear demising partition; provided, however, that in no case shall there be any deduction for columns or other structural elements within any Tenant's premises.

q. *Tenant's Proportionate Share (initial):* Such share is a fraction, the numerator of which is the Tenant's Floor Area, and the denominator of which is the Retail Areas Floor Area of the portion of the Shopping Center owned by Landlord, excluding parcels which are occupied by tenants that self-maintain their respective premises at their sole cost and expense. Tenant's share of Common Area Costs (herein below "CAM"), Premises Property Taxes (herein below "Taxes") and Insurance Charges (herein below "Insurance") for calendar year 2013 (prorated for any partial year) shall not exceed, in the aggregate \$6.00 per square foot of Tenant's Floor Area, and is estimated as follows:

CAM: \$4.25 per square foot

Taxes: \$1.50 per square foot

Insurance: \$0.25 per square foot

Commencing January 1, 2014, and thereafter on the first day of each successive calendar year during the Term, or as soon thereafter as commercially feasible, Landlord shall provide Tenant with estimated charges for CAM, Taxes and Insurance, and Tenant shall pay such amounts to Landlord in equal monthly installments as otherwise set forth in this Lease; provided, however, Tenant's proportionate share of CAM, excluding Uncontrollable Costs, shall not increase by more than five percent (5%) over Tenant's proportionate share CAM in the immediately preceding calendar year. As used herein, the term "Uncontrollable Costs" shall mean (a) snow, ice and storm debris removal, (b) security personnel and services, (c) utilities and (d) capital improvements and replacements. In the event Landlord does not provide revised estimates on or before the first day of each succeeding calendar year, Tenant shall continue to pay the estimated amounts for the immediately preceding calendar year until such new estimate is provided and, further, within ten (10) days following receipt of such new estimate Tenant shall commence payment of the newly estimated sums for the current calendar year and Tenant shall pay to Landlord any deficiency in the amounts actually paid by Tenant prior to commencing payment of the newly estimated amounts and the amounts that would otherwise have been paid if such estimate had been provided on or before the first day of the calendar year.

r. *Tenant's Radius (Section 21.2):* None.

s. *Tenant's Trade Name (Section 11.1):* Montgomery County Liquors.

t. *Tenant's Permitted Use Clause (Article 11):* The Premises shall be used and occupied only for the purpose of the operation of a Montgomery County Department of Liquor Control branch location and for no other use without the express written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed and Tenant acknowledges it shall be reasonable for Landlord to withhold consent to any use that may violate the Prohibited Uses and/or Exclusives and Restrictions then affecting the Shopping Center or duplicate the use of any other occupant then open and operating in the Shopping Center. In no event may Tenant use any portion of the Premises for the Prohibited Uses and/or Exclusives and Restrictions affecting the Shopping Center. Nothing contained in this Lease shall be construed to indicate any intent or attempt on the part of Landlord to restrict the price or prices at which Tenant may sell any goods or service permitted to be sold hereunder.

u. *Term; Renewals:* The Term of this Lease shall begin as of the Commencement Date and shall continue thereafter for a period of ten (10) Rental Years following the Rent Commencement Date. The Term may be extended by Tenant in strict accordance with Section 40 of this Lease. The Commencement Date, the Rent Commencement Date and the expiration date of the Lease (the "Lease Expiration Date") shall be set forth in Landlord's Notice of Lease Term Dates (the "Notice"), which shall be substantially in the form set forth at Exhibit F. The Notice shall be served on Tenant within a reasonable period of time following determination of the Rent Commencement Date under Section 3.j.

#### 4. EXHIBITS.

The exhibits listed below (unless lined out) are incorporated by reference in this Lease:

a. Exhibit A - Plan showing the Premises and Shopping Center, including Lease Outline Drawing (see Sections 3.i. and Article 5)

b. Exhibit B - Shopping Center Rules and Regulations (See Section 25.5)

c. Exhibit C - Landlord's Work; Tenant's Work

Schedule 1 to Exhibit C – Shell Delivery Condition

d. Exhibit D-1 - Form of Tenant Estoppel Certificate (See Section 29.3)

Exhibit D-2 - Form of Subordination, Non-disturbance and Attornment (See Section 29.1)

e. Exhibit E - Shopping Center Sign Criteria

f. Exhibit F - Landlord's Notice of Lease Term Dates (See Section 3.u)

g. Exhibit G - Guaranty of Lease

h. Exhibit H – Reserved

i. Exhibit I – Matters of Record

j. Exhibit J – Prohibited Uses

k. Exhibit K – Existing Exclusives



1. Exhibit L – Reserved

5. SHOPPING CENTER PLAN.

The plan of the Shopping Center attached as Exhibit A shows, among other things, the principal improvements which initially comprise or will initially comprise the Shopping Center, however, Exhibit A is not intended as a representation or warranty that the Shopping Center will be constructed as currently depicted or that any tenants or occupants incidentally referenced therein will open for business in the Shopping Center, and Exhibit A is attached for illustrative purposes only. Tenant agrees that Landlord may at any time and from time to time, change the shape, size, location, number, and extent of the improvements now shown on Exhibit A and may eliminate or add any improvement to any portion of the Shopping Center, without materially interfering with the operation of the existing Premises.

6. OTHER TENANCIES; ANCHOR TENANT.

Landlord reserves the absolute right to effect such other tenancies and uses in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interest of the Shopping Center. Landlord does not represent, and Tenant does not rely on the possibility, that any specific tenant or number of tenants will occupy space in the Shopping Center during the Term. Notwithstanding the foregoing, or anything to the contrary in this Lease, if the anchor grocery tenant (the "Anchor Tenant") identified in Exhibit A has not substantially completed construction of its premises and is not actively fixturing and merchandising its store in an anticipation of opening for business therein on the date Tenant is prepared to open for business (as evidenced by written notice thereof to Landlord), as its sole and exclusive remedy, Tenant shall open for business in the Premises and, in lieu of the Minimum Annual Rent otherwise due, Tenant shall pay a reduced monthly rental amount equal to one-half of the Minimum Annual Rent otherwise then due (herein "Alternate Rent") until the earlier of the date the Anchor Tenant opens for business or a period of six (6) consecutive months. During all periods in which Tenant is paying Alternate Rent, Tenant shall continue to pay all other charges accruing under this Lease in accordance with the terms hereof. At the expiration of the referenced six (6) month period, and notwithstanding that Anchor Tenant may not be open for business, Tenant shall thereupon immediately commence payment of full Minimum Annual Rent.

7. DELIVERY OF POSSESSION, LANDLORD'S WORK.

Landlord reasonably anticipates that the Premises shall be delivered to Tenant with Landlord's Work, as defined in Exhibit C and Schedule C-1 attached to this Lease, substantially completed on or about June 1, 2013 (herein known as "Anticipated Possession Date"), subject, however, to satisfaction of the Contingencies. The actual date on which Landlord delivers the Premises to Tenant is herein referred to as the "Delivery of Possession Date". Landlord shall provide Tenant approximately thirty (30) days prior written notice to the addresses specified in Section 3e of the Delivery of Possession Date that Landlord intends to deliver the Premises to Tenant (the "Turnover Notice"). Tenant agrees to accept possession of the Premises on the Delivery of Possession Date and to promptly commence Tenant's Work in the Premises, as defined in Exhibit C and Schedule C-1 attached to this Lease subject only to receipt of a building permit for Tenant's Work. The only work to be performed by Landlord in connection with delivery of the Premises to Tenant is as defined as Landlord's Work in Exhibit C and Schedule C-1 attached to this Lease. On the Delivery of Possession Date, Tenant accepts the Premises as-is and acknowledges and agrees that Landlord has completed Landlord's Work and all requirements in connection with delivery of the Premises to Tenant. Acceptance of possession by Tenant shall be conclusive evidence that the Landlord's Work has been fully performed in the manner required, except for (i) items which are specifically identified by Tenant on a punch list submitted to Landlord within thirty (30) days after the Delivery of Possession Date, and (ii) any latent defect in Landlord's Work, if any, of which Landlord is provided written notice within six (6) months from the Delivery of Possession Date (as defined above). Notwithstanding the forgoing in the event of a conflict between the Lease and Exhibit C and Schedule C-1, the Lease will control.

8. TENANT'S WORK.

8.1 *Performance of Tenant's Work.* Tenant shall commence construction of Tenant's Work as defined in Exhibit C and Schedule C-1 attached thereto promptly after the Delivery of Possession Date, subject only to receipt of a building permit therefor, and shall diligently complete Tenant's Work in a first-class manner and in compliance with all applicable laws. Tenant shall, at any time as reasonably requested by Landlord or Landlord's architect, construct those portions of Tenant's Work necessary to enable Landlord to proceed with Landlord's Work hereunder.

8.2 *Tenant's Obligation.* Tenant will be permitted by Landlord to enter the Premises for the purpose of performing Tenant's Work and otherwise installing its fixtures and other equipment, provided that (a) Tenant shall have obtained

Landlord's written approval of the plans and specifications for such work, which shall not be unreasonably withheld, conditioned or delayed (b) Tenant shall have provided to Landlord evidence satisfactory to Landlord that Tenant has obtained all permits, licenses and other required governmental authorizations and approvals for such work and that the same shall remain in full force and effect, (c) Tenant shall have deposited with Landlord the policies or certificates of insurance required in Sections 14.1 and 14.2 hereof, and (d) Landlord shall have received full payment from Tenant for any work performed by Landlord which has been agreed to be at Tenant's expense (provided that Landlord shall have no obligation to enter into any such agreement). Tenant's Work shall be performed by Tenant in compliance with all applicable laws, including, but not limited to Montgomery County LEED requirements and all applicable building codes, all at the sole cost and expense of Tenant. Tenant shall take all necessary steps to ensure that no mechanic's or materialmen's liens are filed against the Premises, the Building, the Shopping Center or the Property as a result of or in connection with Tenant's Work. Tenant agrees to promptly apply for an occupancy permit for the use permitted in Tenant's Permitted Use Clause, and any other permits or licenses as required by local and state authorities. Tenant agrees that, without the prior written consent of Landlord in Landlord's sole discretion, neither Tenant, nor any assignee, transferee, or subtenant of Tenant, shall file or cause to be filed any application, or any changes or amendments to any information furnished, for an occupancy permit or any other license or permit which would cause a change in any parking requirements heretofore obtained by Landlord for the Shopping Center. Tenant's activities shall be conducted so as not to unreasonably interfere with Landlord's or any other tenant's construction activities. Tenant shall maintain the Premises in a clean and orderly condition during construction and merchandising. All trash which may accumulate in connection with Tenant's construction activities shall be removed by Tenant at its sole cost and responsibility. During such period, Tenant shall perform all duties and obligations imposed by this Lease, including, without limitation, those provisions relating to insurance and indemnification, saving and excepting only the obligation to pay Rent (other than any additional rent arising out of any failure of Tenant to perform its obligations under this Lease), which obligation shall commence when the Term commences.

8.3 *Opening for Business.* Tenant shall open the Premises for business on the date (herein, the "Required Opening Date") that is one hundred twenty (120) days following the later of (a) the Delivery of Possession Date and (b) the date on which Tenant receives a building permit for Tenant's Work, provided Tenant applies for a building permit not later than fifteen (15) business days following receipt of the Turnover Notice (as defined in Section 7). Notwithstanding the foregoing, in the

event the Required Opening Date would otherwise occur after October 15, 2013, Tenant shall make all reasonable efforts to open for business on or before October 15, 2013 if the grocery store tenant is either open for business in the Shopping Center or actively fixturing and merchandising its premises to open for business and in all events Tenant shall commence payment of Rent hereunder not later than October 15, 2013.

9. RENT.

9.1 *Payment of Minimum Annual Rent.* Tenant shall pay the Minimum Annual Rent stated in this Lease, as may be adjusted as herein provided, during the Term. Minimum Annual Rent shall be due and payable in advance on the first (1st) day of each calendar month of the Term without notice, counterclaim, setoff or deduction, in twelve (12) equal monthly installments during each Rental Year of the Term; provided Minimum Annual Rent shall be reduced proportionately for any Rental Year of less than twelve (12) months. If the Term begins or ends on other than the first (1st) or last day of a calendar month, the monthly installment of Minimum Annual Rent for such partial month shall be prorated based on the actual number of days in such month

9.2 *Rental Adjustment.* Commencing on the first day of the second Rental Year of the Term, and, thereafter, on the first day of each successive Rental Year during the Term (including any Renewal Periods), without notice or demand, the Minimum Annual Rent shall increase by three percent (3%) annually over the Minimum Annual Rent for the immediately preceding Rental Year.

9.3 *Property Taxes.*

a. Beginning with the Rent Commencement Date and for the balance of the Term (including any renewal periods), Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the amount of taxes and assessments levied and/or assessed for any year upon the Shopping Center and any facilities owned in whole or in part by Landlord or otherwise leased or used for the benefit of the Shopping Center (the "Premises Property Taxes"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360-day year.

b. If any Premises Property Taxes (including any assessments which may be evidenced by improvement or other bonds) due hereunder may be paid in annual installments, only the amount of such annual installment (with an appropriate proration for any partial year) and statutory interest thereon shall be included in the computation of annual Premises Property Taxes.

c. The term "Premises Property Taxes" shall include, without limitation, all general real property taxes, and assessments, including, without limitation, (i) all assessments for schools, public improvements, and benefits, charges, fees or assessments for all governmental services or purported benefits to the Shopping Center, (ii) service payments in lieu of taxes, (iii) all business privilege taxes, (iv) any tax, fee or excise on the act of entering into this Lease or any other lease of space in the Shopping Center (including, but not limited to any realty transfer tax) or on the use or occupancy of the Shopping Center or any part thereof, or on the rent payable under any lease or in connection with the business of renting space under any lease or in connection with the business of renting space in the Shopping Center, and (v) other government impositions and charges of every kind and nature whatsoever, whether general or special, foreseen or unforeseen (including all interest and penalties thereon unless same result from Landlord's negligence) that are now or hereafter levied or assessed against Landlord by the United States of America, the State of Maryland, the County of Montgomery, the City (Township/Village) of Clarksburg, or any political subdivision or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or part, any Premises Property Taxes (including without limitation, any municipal income tax) and any license fees, tax measured or imposed upon leasing the Shopping Center, or tax measured by or based in whole or in part upon the economic value of the Shopping Center, or any portion thereof, whether or not now customary or in the contemplation of the parties on the date of this Lease. Premises Property Taxes shall not include transfer, inheritance or capital stock taxes or income taxes measured by the net income of Landlord as a substitute for or as an addition to, in whole or in part, any other tax that would otherwise constitute a tax. Premises Property Taxes shall also include reasonable fees (including fees of attorneys, consultants, appraisers and/or expert witnesses) costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes.

d. Premises Property Taxes which are being contested by Landlord shall nevertheless be included for purposes of the computation of the liability of Tenant under this Section 9.3, provided, however that in the event the Premises Property Taxes are reduced as a result of Landlord's protest, Landlord agrees to reimburse Tenant in an amount equal to so much of Tenant's Proportionate Share of such Premises Property Tax reduction as has actually been paid by Tenant to Landlord, reduced by the proportionate cost of obtaining such refund. Landlord shall have no obligation to contest, object to or litigate the levying or imposition of any Premises Property Taxes and may settle, compromise, consent to, waive or otherwise determine in its discretion any Premises Property Taxes without the

consent or approval of Tenant. For the tax year in which the Term commences or terminates, the provisions of this Section shall apply, but Tenant's liability for Tenant's Share of any Premises Property Taxes for such year shall be subject to a pro rata adjustment based upon the number of days of such tax year falling within the Term.

e. "Premises Property Taxes" shall not include any penalties or fines attributable to the failure to pay Taxes when required. If any refund of real estate taxes is received by Landlord, Tenant will receive its proportionate share of same, less the cost of collecting same.

9.4 *Insurance Charges.* Beginning with the Rent Commencement Date and for the balance of the Term (including any renewal periods), Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the costs and expenses incurred by or on behalf of Landlord in connection with Landlord's Insurance Obligations set forth in Article 14 of this Lease (herein "Insurance Charges"). Such sum shall be prorated for any partial year of the Term on a daily basis, based on a 360-day year.

9.5 *Additional Rent.* In addition to the Minimum Annual Rent, Tenant shall pay to Landlord, as "Additional Rent", all sums of money required to be paid pursuant to the terms of this Article 9, the sums to be paid pursuant to Articles 12 and 22 and Exhibit C, and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not such sums are specifically designated as "additional rent" or "Additional Rent". All amounts required to be paid by Tenant hereunder, including, but not limited to, Minimum Annual Rent, Premises Property Taxes, Insurance Charges, Common Area Costs and all other Additional Rent are sometimes collectively referred to as "Rent."

9.6 *Interest and Late Charges.* If Tenant fails to pay when due and payable, any Rent, additional rent, or other sums due from Tenant under this Lease, the unpaid amounts shall bear interest at the maximum lawful rate from the date due to the date of payment. Therefore, if any installment of Minimum Annual Rent, additional rent or any other rent due and payable under this Lease is not received by Landlord from Tenant by the fifth (5th) day of the month for which such installment is due, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such installment. Tenant shall be forgiven one (1) such late payment per year and will not incur any late charges for such occurrence. Any further occurrence of a late payment for the same year will incur the aforementioned late charge. Such late charge is in addition to any interest due pursuant to the first sentence of this Section 9.6. Landlord and Tenant agree that

this late charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for its loss suffered by, such nonpayment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights and remedies available to Landlord under this Lease.

9.7 *Payment of Rent.* All Rent and other payments due under this Lease shall be paid by Tenant to Landlord at such place as may from time to time be designated by Landlord. The initial location for receipt of payments of Rent and other charges hereunder is as set forth in Section 3.d. Landlord may designate such other location as Landlord in its sole discretion determines by written notice to Tenant at least twenty (20) days prior to the next ensuing payment date.

10. GROSS SALES. Intentionally Deleted.

11. POSSESSION AND USE.

*Permitted Uses and Prohibited Conduct.* Tenant shall use the Premises solely for the purposes set forth in Tenant's Permitted Use Clause and shall operate its business only under the trade name specified as Tenant's Trade Name, Montgomery County Liquors, as set forth in Section 3 s. Tenant shall not use or permit the Premises to be used for any other purposes or under any other trade name, other than as set forth in Tenant's Permitted Use Clause. Tenant shall not, without the prior written consent of Landlord, sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant shall not use or permit the Premises to be used for any purpose prohibited, restricted or limited by applicable laws, the Prohibited Uses, the Exclusives and Restrictions or any Permitted Encumbrances. Tenant hereby represents, warrants, covenants and agrees that Tenant shall comply with all requirements, limitations and obligations contained in the Permitted Encumbrances. Tenant shall at all times during the Term keep the Premises in a clean condition, well stocked with merchandise, and free of any objectionable noises, odors or nuisances. All trash and rubbish of Tenant shall be deposited only in receptacles provided by Landlord and no other trash receptacles shall be permitted to remain outside the Premises or Building. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's expense, and which expense shall be paid as Additional Rent under this Lease. Tenant shall not cause or permit waste to occur in the Premises and shall not overload any floor or abuse the plumbing in the Premises.



Tenant at its sole cost and expense, shall comply, and, after the Delivery of Possession Date, shall cause the Premises to comply with (a) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting any part of the Premises, or the use thereof, including, but not limited to, those which require recycling, conservation of energy, but excluding the making of any structural or extraordinary changes to the Premises (which shall be the responsibility of Landlord), whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, (b) all rules, orders and regulations of the National Board of Fire Underwriters, Landlord's casualty insurer(s) and other applicable insurance rating organizations or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises, and (c) all affirmative action requirements imposed by applicable law.

Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls, roof or permanent doorways of the Premises, or in the Building hallways. No aerials or antennae shall be erected on the roof or exterior walls of the Premises or Building without first obtaining, in each instance, the written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Any aerial or antenna so installed without Landlord's written consent may be removed without notice at any time, at Tenant's expense. Tenant shall not solicit or distribute materials in any manner in any of the Common Areas (including automobile parking facilities of the Shopping Center). Tenant acknowledges that the Prohibited Uses identified in Exhibit J and the Exclusives and Restrictions identified in Exhibit K may be amended and expanded upon from time to time, in Landlord's sole discretion and such changes to the foregoing Exhibits shall be provided to Tenant in writing.

11.1 *Insurance Coverage Use Restrictions.* Tenant shall not carry any stock or goods or do anything in or about the Premises which tends to increase the insurance rates on the Building or Shopping Center or impairs Landlord's ability to maintain insurance coverage on the Building or Shopping Center. Tenant agrees to pay to Landlord promptly upon demand the amount of any increase in landlord's insurance premiums caused by Tenant's violation of these restrictions, whether or not Landlord has consented to such act(s) by Tenant. If Tenant installs any electrical or other equipment in the Premises which overloads the electrical lines or any utility or service to the Premises, Tenant shall, at its expense, make any changes and install any fire extinguishing equipment required by Landlord's



insurance underwriters or applicable fire, safety and building codes and regulations. Nothing herein contained constitutes Landlord's consent to such overloading.

11.2 *Deliveries.* Tenant shall endeavor to complete all deliveries, loading, unloading and services to the Premises before 11:00 a.m. each day; provided, however, that in no event shall Tenant schedule any such deliveries, loading or unloading for the Premises prior to 7:00 a.m. each day. Tenant shall make all reasonable efforts to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 11:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries to and servicing of the Premises and Tenant agrees to abide by such additional non-discriminatory regulations within ten (10) days after receiving written notice thereof, unless in the case of emergencies in which no prior notice shall be need to be given.

11.3 *Operating Hours.* Tenant shall cause its business to be conducted and operated continuously and in such manner as shall assure the transaction of a reasonable volume of business in and at the Premises and in the manner in keeping with other liquor stores operated by Montgomery County, Maryland. Unless other hours are approved or established by Landlord in writing, which Landlord shall have the right but not the obligation to do; Tenant shall cause the Premises to be open for business during all Operating Hours, unless otherwise prohibited by law, in which case Tenant shall comply with all lawful ordinances governing its hours of operation.

If Tenant shall request Landlord's approval of the opening of the Premises for business for periods exceeding the Operating Hours of the Shopping Center and Landlord shall approve such request in writing, then, at Landlord's election, Landlord may require as a condition of such approval that Tenant shall pay to Landlord the full cost actually incurred by Landlord for providing security and such other services, if any, as may be provided by Landlord for the Shopping Center during such additional hours the Shopping Center is not open for business beyond its usual Shopping Center hours.

Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to remain open on Sundays, Montgomery County, Maryland holiday's or national holidays.

## 12. UTILITIES SERVICES.

12.1 *Water, Electricity, Telephone and Sanitary Sewer.* Landlord will provide, or cause to be provided, the facilities necessary to enable Tenant to connect to the Premises water and sewer service, electricity, telephone, and gas (as applicable to Premises), such facilities and their locations being more specifically described in Exhibit C. Tenant shall arrange for electricity service and shall pay all charges therefor, and shall arrange and pay for all other utility services provided to the Premises, which Landlord shall cause to be separately metered, at Landlord's sole cost and expense. Landlord shall provide initial taps, at Landlord's cost and expense, for water and sanitary sewer service to the Premises; provided, however, that any refund received by Tenant of the initial tap fees paid by Landlord and applicable to the Premises shall be immediately endorsed by Tenant to Landlord or shall be refunded to Landlord by Tenant, as the case may be.

Tenant shall not utilize any machinery or equipment or utilities of any kind which would, in Landlord's reasonable discretion, (a) increase Common Area Costs, (b) overload the central electrical service to the Premises, to the Shopping Center, or to any portion thereof or (c) necessitate any changes, replacements or additions to, or in the use of, the water, sewage, heating, air conditioning, ventilating, plumbing or electrical systems serving the Premises, the Shopping Center or to any portion thereof.

12.2 *Heating, Ventilating and Air-Conditioning.* Tenant shall, throughout the Term (including any renewal periods), operate, maintain, repair and, if necessary, replace, at Tenant's cost and expense, the heating, ventilating and air-conditioning ("HVAC") serving the Premises. In connection with the foregoing, and without limiting the obligations of Tenant in connection with the maintenance and repair of the HVAC serving the Premises, Tenant shall enter into and maintain during the Term of this Lease an HVAC system maintenance contract for the Premises which shall include routine inspections and replacement of belts, filters and fluids as recommended by the manufacturer, and shall provide a copy of such contract to Landlord within ten (10) business days following the Rent Commencement Date and within 10 (10) business days following each calendar year during the Term and any change, if any, in Tenant's HVAC maintenance contractor at any time during the Term. Notwithstanding the foregoing, in the event that the installation, maintenance or repair of the HVAC requires roof penetrations, all roof penetrations shall be done by a reputable roofing contractor under the supervision of Landlord's roofing contractor in order to prevent any violation of the Building's roofing warranty, at Tenant's sole cost and expense.

12.3 *Discontinuances and Interruptions of Utility Service.* Landlord shall not be liable for any loss of revenues or any other loss, damage, costs or expense resulting from or arising out of any discontinuance of utilities and the same shall not constitute a termination of this Lease or an actual or constructive eviction of Tenant. Landlord shall not be liable to Tenant in damages or otherwise (i) if any utility shall become unavailable from any public utility company, public authority or any other person or entity (including Landlord) supplying or distributing such utility, or (ii) for any interruption in any utility service (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of any maintenance, repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a termination of this Lease or an actual or constructive eviction of Tenant. Notwithstanding anything contained in the Lease to the contrary, in the event utility service to the Premises is interrupted and Tenant is unable to operate its business in the Leased Premises and such interruption in service is caused by a negligent act or omission of Landlord, its agents, employees or contractors and continues for a period of more than seventy-two (72) hours after written notice thereof to Landlord, the Minimum Rent and Additional shall be abated until such service is restored to the Leased Premises.

### 13. INDEMNITY BY TENANT.

The County shall indemnify and hold harmless Landlord (excluding, however, the intentional or negligent acts of Landlord) and as limited by the damages caps stated in the Immunity Statutes defined below to the extent applicable, from and against all claims, demands, liabilities, damages, judgments, orders, decrees, actions, fines and penalties arising from or relating to any violation of law, loss of life, damage or injury to persons, property or business occurring in, about or from the Premises or the Shopping Center in connection with the County's use and/or occupancy of the Premises or Shopping Center. Any indemnification given by the County under this Lease is expressly limited by the damages caps and notification requirements, to the extent applicable to the occurrence giving rise to such indemnity obligation, specified in the Local Government Tort Claims Act (the "LGCTA"), Md. Code Ann. Cts. & Jud. Proc. §§ 5-301 et seq. (2006 Repl. Vol.) Md. Code Ann. art. 2B §§ 15-201 et seq. (2005 Repl. Vol.) and Md. Code Ann. Cts. & Jud. Proc. §§ 504 et seq. (2006 Repl. Vol.) (the "Department of Liquor Control Immunity Statutes"), (the LGCTA and the Department of Liquor Control Immunity Statutes together the "Immunity Statutes"). Any indemnification given by the County is not intended to create any rights in any third parties or to increase the County's liability above the caps provided in the County Indemnification Statutes, as applicable.

14. INSURANCE.

14.1 *County Property Damage and Liability Insurance.*

- A. The County (as Tenant hereunder) shall obtain and maintain, during the full term of this Lease, and any extension thereof, a policy of commercial general liability insurance with bodily injury limits of \$200,000 (Two Hundred Thousand Dollars) for injury (or death) to one person, \$500,000 (Five Hundred Thousand Dollars) per occurrence, and limits for damage to the property of others of \$200,000 (Two Hundred Thousand Dollars). The County shall have the right to self-insure. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, under the Local Government Tort Claims Act, Ann. Code, Cts & Jud. Proc. Sect. 5-301 et seq. (2002 Repl. Vol) as amended. The County shall also maintain workers compensation coverage in statutorily required amounts.
- B. The County agrees that it will not keep in or upon the Premises any article which may be prohibited by the standard form of fire or hazard insurance policy.
- C. The County further agrees that all personal property in the Premises shall be and remain at County's sole risk, and Landlord shall not be liable for any damage to or loss of such personal property, excepting damages arising out of the negligent acts or the omissions of the Landlord, the Landlord agents, contractors or employees.
- D. On or before the Delivery of Possession Date, and as a condition precedent to the obligation of Landlord to deliver the Premises to Tenant, and, thereafter, within thirty (30) days of Landlord's request, the County shall deliver to Landlord a certificate of insurance evidencing the coverage hereinabove described.

14.2 *Landlord Property Damage and Liability Insurance.*

- A. Landlord shall obtain and maintain, during the full term of this Lease, and any extension thereof, a policy of commercial general liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and damage to the property of others. Montgomery County must be named as Additional Insured on all liability policies. Landlord shall provide

Tenant with notice in the event of cancellation or non-renewal not less than thirty (30) days prior to policy cancellation.

- B. The Landlord shall obtain and maintain a Special Form-Causes of Loss Property Policy to protect the interest of the Landlord against loss caused by the perils insured in the amount of One Hundred Percent (100%) of the Landlord's insurable interests of the Shopping Center.
- C. Within thirty (30) days of the County's written request, Landlord shall provide a certificate of insurance evidencing the coverage hereinabove described within thirty (30) days from execution of this Lease.
- D. Landlord shall also have the right to maintain such additional types of insurance (including business interruption insurance and rent loss insurance) as are customary, prudent or reasonable for shopping centers similar to the Shopping Center. Landlord's obligation to carry the insurance provided for herein may be satisfied by blanket policies if the coverage required hereunder is satisfied.

15. TITLE OF LANDLORD.

Landlord's estate in the Shopping Center and Tenant's leasehold estate in the Premises is subject to (a) the liens, covenants restrictions, easements and agreements set forth in any matters or documents of public record (the "Matters of Record"), including the effect of any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way or any construction, and (b) the effect of any zoning laws of the City, County and State where the Shopping Center is located. Tenant agrees that (i) Tenant and all persons in possession of Tenant's leasehold estate or holding under Tenant will conform to and will not violate any of the terms of the Matters of Record. Tenant further covenants and agrees that Tenant will not violate any of the Permitted Encumbrances, including but not limited to, any of the Prohibited Uses or Exclusives and Restrictions, and (ii) this Lease is subject and subordinate to all Permitted Encumbrances as such term is herein defined.

Unless materially adversely affecting Tenant's use of the Premises, Landlord shall have the right throughout the Term, exercisable at Landlord's sole discretion and without the requirement of any consent by Tenant (and with the cooperation of Tenant, which Tenant agrees to provide), to enter into, grant, modify, cancel or otherwise affect any easements, cross-easements, reciprocal parking agreements, or

other agreements regarding accessways, roadways and other means of ingress to and egress from and between the property comprising the Shopping Center, and the Shopping Center parking areas.

## 16. TENANT'S RIGHT TO MAKE ALTERATIONS.

16.1 *Improvements.* Subject to the terms of Article 15 and this Article 16, Tenant may from time to time after completion of Tenant's Work and at its own expense, make interior, non-structural, non-material alterations, additions, improvements and changes (individually and collectively referred to in this Article 16 as "improvement(s)") in and to the interior of the Premises after first giving notice to Landlord of the improvement work proposed to be done, providing Landlord with all plans for such proposed improvement work and receiving the prior written consent of Landlord, which consent shall not be unreasonably conditioned, withheld or delayed with respect to any improvement which would not effect any of the structural components of the Premises or the Shopping Center or any of the Shopping Center's operating systems, including, but not limited to, any operating systems serving the Premises. Notwithstanding the foregoing, in any given year, improvements costing \$20,000 or less may be made by Tenant without first obtaining the written approval of Landlord, provided that any such improvement does not alter the exterior appearance of the Premises or any of the structural components of the Premises or the Shopping Center or any of the Shopping Center's operating systems, including, but not limited to, any operating systems serving the Premises. Tenant may not make any improvement which reduces the value of the Premises.

No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, all allowed roof penetrations shall be done solely by a roofing contractor approved by Landlord in Landlord's sole discretion in order to prevent any violation of the Building's roofing warranty, at Tenant's sole cost and expense. Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord. No penetration into the slab of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such slab penetration, all allowed slab penetrations shall be done solely by a contractor approved by Landlord in Landlord's sole discretion, at Tenant's sole cost and expense. Landlord shall have the absolute right to select and supervise the contractor performing such slab penetration.

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No penetration into or through the roof or floor of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such penetration, all allowed roof penetrations shall be done solely by a roofing contractor approved by Landlord in Landlord's sole discretion in order to prevent any violation of the Building's roofing warranty, at Tenant's sole cost and expense. Landlord shall have the absolute right to select and supervise the contractor performing such penetration. Tenant shall be liable for any damage caused by any such penetration, whether or not so approved by Landlord. No penetration into the slab of the Premises may be made without Landlord's prior written approval of the reason for such penetration and the method by which it is to be done. If Landlord approves any such slab penetration, all allowed slab penetrations shall be done solely by a contractor approved by Landlord in Landlord's sole discretion, at Tenant's sole cost and expense. Landlord shall have the absolute right to select and supervise the contractor performing such slab penetration.

Tenant shall reimburse Landlord for all costs reasonably incurred by Landlord (including architects' and/or engineers' fees) in approving Tenant's plans for improvements and for reasonable costs incurred by Landlord in supervising any improvement work required to be approved by Landlord hereunder.

16.2 *Construction Requirements.* All improvements to be made to the Premises which require the approval of Landlord shall be performed under the supervision of a competent architect or competent licensed structural engineer and shall be made in accordance with plans and specifications first approved in writing by Landlord before the commencement of work, which approval shall not be unreasonably conditioned, withheld or delayed. All improvements shall be constructed in a good and workmanlike manner in accordance with all applicable laws (including any laws relating to the use of hazardous materials, such as asbestos containing materials) and diligently completed. Before commencement of any construction, Tenant shall deliver a copy of the building permit to Landlord and shall provide Landlord with a list of all contractors and subcontractors being used. Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials in connection with any improvements made to the Premises. Upon expiration or earlier termination of this Lease, such improvements shall become a part of the Premises and shall not be removed by Tenant. In constructing such improvements, Tenant shall have the work performed in such a manner as not to obstruct access to the premises of any other tenant in the Shopping Center. Tenant shall take all necessary steps to ensure that no mechanic's or materialmen's liens are filed against the Premises, the Building, the Shopping Center or the Land as a result of any improvements performed by or on behalf of Tenant.

16.3 *Insurance Requirements.* If Tenant makes any permitted improvements to the Premises under the provisions of this Article 16, Tenant shall carry insurance covering any such improvements satisfying the requirements of Section 14. It is expressly understood and agreed that no such improvements will be insured by Landlord under the insurance it may carry upon the Building or Shopping Center, nor shall Landlord be required to reinstall any such improvements made by Tenant under any provision of Article 23 for reconstruction of the Premises.

## 17. MECHANICS' LIENS.

17.1 *Tenant's Obligations.* No work performed by Tenant pursuant to this Lease, whether in the nature of erection, construction, alteration or repair, and whether or not the performance of any such work shall have been required, consented to, or approved by Landlord, shall be deemed to be for the immediate use and benefit of



Landlord, nor shall Tenant be deemed to be the agent of Landlord in performing such work, and no mechanics' or other liens shall be allowed against the estate of Landlord or against Tenant's leasehold interest by reason of any consent given by Landlord to Tenant to improve the Premises. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises. If any mechanics' or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall, not later than fifteen (15) days from the date Tenant receives notice of the filing of the lien, cause the same to be discharged of record or bonded to the satisfaction of Landlord. If Tenant shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, such failure shall constitute an event of default by Tenant and in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord, including reasonable attorneys' fees incurred by Landlord either in defending against such lien or in procuring the bonding or discharge of such lien, together with interest thereon as provided for in this Lease, shall be due and payable by Tenant to Landlord, on demand, as additional rent.

17.2 *Notice of Lien.* If any claim of lien is filed against the Premises or any action affecting the title to the Premises or the property therein is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

17.3 *Notice of Non-Responsibility.* Landlord or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the Protection of Landlord's interest in the Premises. Tenant shall, before commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

## 18. ADVERTISING MEDIA.

*Signs and Advertising.* Tenant shall not affix or maintain upon the glass panes or supports of the show windows [or within twenty-four (24) inches of any window], doors or exterior walls of the Premises, or anywhere else in the Shopping Center, any signs, advertising placards, names, insignia, trademarks, decoration,

descriptive material or any other like item(s) without having first received the written approval of Landlord as to the size, type, color, location, copy, nature and display qualities of any such item, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not affix any sign to the roof of the Premises. Provided Tenant complies with the sign criteria applicable to the Shopping Center, Landlord agrees that any of the County's signage shall contain the County's trade name and the County "Seal."

Tenant shall not utilize any advertising medium which can be seen or heard outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center, nor shall Tenant distribute any handbills or other advertising devices in the Shopping Center.

Prior to initially opening for business in the Premises Tenant shall erect its storefront sign in accordance with the provisions of the sign criteria attached hereto as Exhibit E, and thereafter Tenant shall not modify or replace such sign or add any sign(s) without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

Tenant will, at its sole cost and expense, (i) maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times, and (ii) obtain and maintain in full force and effect such permits, licenses and other governmental approvals as may be required in connection with such signs, decorations, lettering, advertising matter or other thing permitted hereunder. Tenant agrees to have its electronic sign(s), if any, turned on at all times during Operating Hours when the outdoor conditions require artificial light. Tenant will not reproduce or in any manner use or permit the use of any logo or other identifying symbol designed or utilized for the Shopping Center by or at the direction of Landlord without Landlord's prior written consent, which may be withheld for any reason.

18.1 *Painting and Displays by Tenant.* Tenant will not paint or decorate any part of the exterior of the Premises. Tenant will not paint or decorate any part of the interior of the Premises visible from the exterior thereof, without first obtaining Landlord's written approval which approval shall not be unreasonably withheld, conditioned or delayed. Tenant will install and maintain at all times, subject to the other provisions of this Section, displays or merchandise in the show windows (if any) of the Premises. All articles, and the arrangement, style, color and general appearance thereof, in the interior of the Premises, including, without limitation,

window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the character and standards of the Shopping Center, as determined by Landlord in its reasonable discretion. Landlord reserves the right to require Tenant to correct any non-conformity, which Tenant hereby covenants to do immediately upon written notice from Landlord and, in the event that Tenant fails to correct any such non-conformity, Landlord may elect to correct such condition pursuant to Section 22.3 hereof.

## 19. FIXTURES AND PERSONAL PROPERTY.

19.1 *Removal and Replacement.* All of Tenant's trade fixtures, furnishings, furniture, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property") shall be in good condition when installed in or attached to the Premises by Tenant and shall remain the property of Tenant. If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to remove its Personal Property from the Premises, including without limitation, counters, shelving, showcases, mirrors and other movable Personal Property, but prior to the expiration of the Term Tenant may not remove so much of its Personal Property without immediately replacing it with comparable or better quality Personal Property, as to render the Premises unsuitable for conducting the business specified in Tenant's Permitted Use Clause. Tenant shall, at its expense, immediately repair any damage to the Premises resulting from removal of its Personal Property, and on the expiration or earlier termination of the Term shall leave the Premises in a neat and clean condition, free of debris.

19.2 *Fixtures.* All improvements to the Premises made by or for Tenant, excluding Tenant's Personal Property, but including mechanical, plumbing and electrical systems and all utility meters and related equipment, light fixtures, floor coverings and partitions and all other items comprising Tenant's Work pursuant to Exhibit C (collectively referred to as "Fixtures"), shall become the property of Landlord upon expiration or earlier termination of this Lease.

19.3 *Personal Property Taxes.* Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operations, merchandise, trade fixtures and/or Personal Property. If any such items of property are assessed with any combined parcel as provided in Section 9.3 Tenant shall pay Landlord the taxes attributable to tenant's personal property within fifteen (15) days after Tenant's receipt of a written statement from Landlord setting forth such personal property taxes. Landlord shall reasonably determine the basis of prorating any such

assessments and such determination shall be binding on Landlord and Tenant. No taxes, assessments, fees or charges referred to and billed to Tenant under this paragraph shall be considered to be taxes under the provisions of Section 9.3 hereof.

20. ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN OWNERSHIP. County will not assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises.

21. TENANT'S CONDUCT OF BUSINESS.

21.1 *Tenant's Operating Covenants.* Tenant agrees that from and after its initial opening for business as Montgomery County Liquors, Tenant shall, subject to the provisions of Article 23 hereof, operate and conduct its business as Montgomery County Liquors in the Premises during the Operating Hours and in accordance with the provisions of this Lease, except as limited by applicable laws and then only in accordance with applicable laws. Tenant shall at all times keep and maintain in the Premises an adequate staff and stock of merchandise and trade fixtures to satisfy the usual and ordinary demands and requirements of its customers and shall keep the Premises in a neat, clean and orderly condition.

Tenant further agrees to continuously illuminate its window displays, exterior signs and exterior advertising displays during all hours that the Shopping Center is open for business to the public. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remain open on Sundays, Montgomery County holiday's or national holidays.

21.2 *Radius Provision.* Intentionally Omitted.

22. REPAIR AND MAINTENANCE OF THE PREMISES.

22.1 Tenant shall at its expense and at all times from and after the Delivery of Possession Date repair, replace, and maintain in good and tenantable condition the Premises and every part thereof (except portions of the Premises to be maintained by Landlord under Section 22.2), including without limitation the utility meters, pipes and conduits serving the interior of the Premises, all fixtures, the storefront, plate glass, all signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, security grilles or similar enclosures, floor covering, including carpeting, terrazzo or other special flooring, all other equipment installed in the Premises and all such items of repair, maintenance, alteration and improvement or reconstruction to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction

thereof. All exterior and interior glass in the Premises shall be maintained by Tenant and any glass broken shall be promptly replaced by Tenant at its expense with glass of the same kind, size and quality.

Tenant shall at Tenant's expense contract with a qualified service company for the quarterly maintenance of the HVAC system serving the Premises.

Upon surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and repair, but Tenant shall not be responsible for ordinary wear and tear to the Premises or damage due to insured casualty losses covered by Article 23.

*22.2 Landlord's Obligations.* Subject to Tenant's obligations under Section 22.1, Landlord shall, at the expense of Tenant and all other tenants of the Shopping Center, repair and maintain in good condition the roof, exterior walls and structural parts of the Premises and Building (including the structural floor). Landlord shall bill Tenant for Tenant's Proportionate Share of the cost of such repairs and maintenance as a part of Common Area Costs under Article 25 hereof.

Notwithstanding anything to the contrary contained herein, Tenant shall be responsible at its expense for making any repairs necessitated by reason of the negligence of Tenant or any of its agents, employees, or contractors or by reason of the failure of Tenant to perform or observe any of its obligations under this Lease or by reason of alterations, additions, or improvements to the Premises made by Tenant. Notwithstanding the foregoing, Landlord shall have the right (but shall not be required) to make such repairs so necessitated by Tenant. If Landlord elects to make such repairs on Tenant's behalf, Tenant shall pay to Landlord, as Additional Rent, any such costs incurred by Landlord promptly following receipt of a bill therefor.

It is understood and agreed that Landlord is under no obligation to make any repairs alterations, replacements or improvements to the Premises or the mechanical equipment exclusively serving the Premises at any time except as expressly set forth in this Lease.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable to Tenant for failure to make repairs required of Landlord hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence those repairs within a thirty (30) days period of time following receipt of Tenant's notice and thereafter complete the same to the extent feasible.

22.3 *Damage by Tenant; Tenant's Failure To Maintain Premises.* Except as otherwise expressly provided in this Lease, all injury, breakage and damage to the Property, the Building or the Premises, caused by any act or omission of Tenant shall be repaired by and at the sole expense of Tenant, except that in the event that Tenant fails to make such repairs within the time designated by Landlord, which shall be not less than ten (10) business days following written notice by Landlord to Tenant or such shorter period of time as Landlord, in its sole discretion, determines is appropriate under the circumstances, then, in such event, Landlord shall have the right, at its option, to make such repairs and to charge Tenant for all reasonable costs and expenses incurred in connection therewith as additional rent payable within fifteen (15) days after the rendering of a bill therefor. Tenant shall notify Landlord promptly of any injury, breakage or damage to the Land, the Building, or the Premises caused by Tenant.

22.4 *Landlord's Right of Entry.* Landlord or its authorized representatives may enter the Premises at all reasonable times during the Operating Hours (or at any time, in the event of an emergency), to inspect the Premises, make repairs to the Premises authorized hereunder or perform any work therein, (i) needed to comply with any laws, ordinances, rules or regulations of any public authority or any insurance body or carrier or any similar body, (ii) that Landlord deems necessary to prevent waste or deterioration in or to the Premises if Tenant fails to make repairs or perform required work promptly after receipt of written demand from Landlord, or (iii) that Landlord deems necessary in connection with the expansion, reduction, remodeling, or renovation of any portion of the Shopping Center. Nothing herein implies any duty of Landlord to do any such work which, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do such work. No exercise by Landlord of any rights hereunder shall entitle Tenant to any compensation, damages or abatement of Rent for any injury or inconvenience occasioned by such exercise. If Landlord makes or performs any repairs provided for in (i) or (ii) above, Tenant shall pay the reasonable cost thereof to Landlord as additional rent promptly upon receipt of a bill therefor.

## 23. CASUALTY DAMAGE AND RECONSTRUCTION.

23.1 *Casualty Damage.* If there is a partial destruction of the Premises by reason of fire or other perils and such loss is actually paid for by Landlord's fire and extended coverage insurance, then, subject to the rights of any mortgagee(s) with respect to the Shopping Center, within ninety (90) days following the date of such damage, or such further time as is required for Landlord to adjust the claim with its insurance carrier, Landlord shall commence repair, reconstruction or restoration of

the Premises and diligently complete such repairs, in which event this Lease shall, continue in full force and effect. Notwithstanding the foregoing, if there is a destruction of the Premises and (a) the Premises are (i) rendered wholly untenable, (ii) damaged or destroyed as a result of any cause which is not covered by Landlord's insurance or (iii) damaged or destroyed in whole or in part during the last three (3) years of the Term, or (iv) damaged or destroyed such that the cost of replacement of the Premises shall exceed fifty percent (50%) of the then insured value thereof, or (b) the retail areas of the Shopping Center or the Shopping Center itself shall be so substantially damaged or destroyed (irrespective of whether the Premises are damaged or destroyed) that it is reasonably necessary in Landlord's sole judgment to demolish the buildings of the Shopping Center for the purpose of reconstruction, (c) the Shopping Center is damaged or destroyed to the extent of twenty-five percent (25%) or more of the Retail Areas Floor Area or twenty-five percent (25%) or more of the then insured value of the retail areas of the Shopping Center, irrespective of whether the Premises are damaged or destroyed, (d) twenty-five percent (25%) or more of the leases with retail tenants are terminated as a result of damage or destruction to the Shopping Center, or (e) such portion of the parking areas of the Shopping Center as shall cause Landlord not to be in compliance with applicable laws or regulations (or both) is damaged or destroyed, then, in any of such events, Landlord may elect to terminate this Lease by giving to Tenant notice of such election within one hundred twenty (120) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and Rent (other than any additional rent due Landlord by reason of Tenant's failure to perform any of its obligations hereunder) shall be adjusted as of the date of such termination. For the purposes of this option "partial destruction" shall mean destruction to the extent of less than thirty-three and one-third percent (33-1/3%) of the full replacement cost of the Premises as of the date of destruction.

**23.2 Reconstruction Responsibilities.** Any reconstruction of the Premises under this Article 23 shall conform to the provisions of Exhibit C and shall cover all work set forth therein as "Landlord's Work" and "Tenant's Work". Landlord shall reconstruct the Premises only to the extent of Landlord's Work. Tenant shall cooperate with Landlord in the removal of Tenant's merchandise and property from the Premises and otherwise cooperate as necessary to facilitate Landlord's reconstruction. Tenant at its expense, shall reconstruct all items set forth as Tenant's Work, and shall replace its merchandise, trade fixtures, furniture, furnishings and equipment. Tenant shall commence reconstruction of Tenant's Work promptly upon delivery to it of possession of the Premises by Landlord with Landlord's Work substantially completed and shall diligently complete Tenant's

Work, replace its merchandise, trade fixtures, furniture, furnishings and equipment and resume normal business operations in the Premises.

23.3 *Release from Liability.* Upon any termination of this Lease under any of the provisions of this Article 23, each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance under Section 14 covering the items set forth as Tenant's Work in Exhibit C and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other personal property, shall be paid to Landlord.

23.4 *Abatement of Rent.* In the event of reconstruction of the Premises under this Article 23, the Minimum Annual Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is prohibited. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for in Section 23.2. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical as a matter of prudent business management and the obligation of Tenant to pay Annual Percentage Rental and additional rent hereunder shall remain in full force and effect.

Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Building, Shopping Center or Tenant's personal property, or for any inconvenience or annoyance suffered by reason of damage or destruction thereto, or the reconstruction or replacement thereof.

23.5 *Waiver of Statutory Rights of Termination.* Intentionally Deleted.

24. EMINENT DOMAIN.

24.1 *Takings Resulting in Termination.* If the entire Premises is appropriated or taken (a "taking") under the power of eminent domain by any public or quasi-public authority (an "authority"), this Lease shall terminate as of the date of such taking.

If twenty-five percent (25%) or more of the Tenant's Floor Area is taken under the power of eminent domain by any authority, or if by reason of any taking, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in



writing of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that the Premises have been so taken. Landlord shall promptly give Tenant notice in writing of any taking after learning of it.

If more than twenty-five percent (25%) of the Retail Areas Floor Area or of the Common Areas is taken (whether or not the Premises are so taken) under the power of eminent domain by any authority, Landlord shall have the right to terminate this Lease as of the date any such areas are to be initially vacated by giving Tenant written notice of such election within thirty (30) days of the date of such taking.

If this Lease is terminated as provided in this Section 24.1 Landlord and Tenant shall each be released from any further obligations to the other party under this Lease, except for any obligations which have previously accrued.

24.2 *Takings Not Resulting in Termination.* If both Landlord and Tenant elect not to exercise any right granted hereunder to terminate this Lease in connection with a taking, or the Lease is not terminable in connection with a taking, Tenant shall continue to occupy that portion of the Premises which was not taken and (a) subject to the rights of any mortgagee(s) with respect to the Shopping Center, at Landlord's cost and expense and as soon as reasonably possible, and if economically prudent and feasible, Landlord will restore the Premises on the land remaining to a complete unit of like quality and character as existed prior to such taking; and (b) the Minimum Annual Rent provided for in Section 3.f. and Article 9 shall be reduced pro rata, based upon the square footage of the portion of the Premises taken as compared to the portion remaining.

24.3 *Award.* If this Lease is terminated under Section 24.1 or modified under Section 24.2, Landlord shall be entitled to receive the entire condemnation award for the taking of all property interests in the Premises. The Rent and other charges for the last month of tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Rent or other charges paid in advance. Notwithstanding the foregoing and provided Tenant's award does not reduce or affect Landlord's award, Tenant's right to receive a condemnation award for the taking of its merchandise, Personal Property, goodwill, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 24.3.

24.4 *Transfer Under Threat Of Taking.* For the purpose of this Article 24, a voluntary sale or conveyance under threat of and in lieu of condemnation shall be deemed a taking under the power of eminent domain.

## 25. COMMON AREAS.

25.1 *Use of Common Areas.* Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center Rules and Regulations or as otherwise designated from time to time by Landlord, authorized to use the Common Areas in common with other persons during the Term. Landlord currently contemplates that the Common Areas will be initially constructed generally as shown on Exhibit A, however, Landlord in no way represents or warrants that the Common Areas shall be so constructed.

25.2 *Landlord's Maintenance Responsibilities; Common Area Costs.* Landlord shall keep the Common Areas and Shopping Center neat, clean and orderly, properly lighted and landscaped, and, subject to the provisions of Articles 23 and 24 of this Lease, shall repair any damage to Common Areas and Shopping Center facilities. Notwithstanding the foregoing, all costs and expenses incurred by or on behalf of Landlord in connection with the operation, repair, cleaning, maintenance and replacement of the Common Areas of the Shopping Center and those portions of the Shopping Center which Landlord is obligated to maintain (collectively "Common Area Costs") shall be charged and prorated in the manner set forth in this Article 25.

Common Area Costs shall include, without limitation:

a. all costs and expenses incurred by or on behalf of Landlord in operating, insuring, securing and maintaining the Common Areas, whether such costs and expenses are for services, facilities, materials, rights or benefits with respect to portions of the Common Areas which are intended to serve or benefit only the retail areas of the Shopping Center or which are intended to serve or benefit more of the Shopping Center than such retail areas, including, without limitation, all costs and expenses of: operating, equipping, maintaining, repairing, lighting, heating, ventilating, air conditioning, insuring, signage, cleaning, painting, striping, repairing, policing, protecting and security of the Common Areas (including, without limitations the cost of uniforms, equipment and employment taxes); salaries, fringe benefits and other compensation, however denominated, of all on-site personnel at the Shopping Center whose job functions in any manner relate to the retail areas of the Shopping Center or any portion thereof; alarm systems; sprinkler systems; insurance, including, without limitation, liability insurance for personal injury, death and property damage, insurance against fire, extended coverage, theft or other casualties, worker's compensation insurance covering personnel, fidelity bonds for personnel, rent loss insurance, insurance against liability for defamation and claims of false arrest occurring on and about

the Shopping Center, and plate glass insurance for glass serving the Common Areas; non-structural exterior maintenance of the buildings in the Shopping Center; maintenance, repair and replacement of all glass serving the Common Areas; storage, removal and other costs associated with trash and debris; operation of a central dumping area (in the event Landlord elects to establish such service); regulation of traffic; costs and expenses of inspecting and depreciation of machinery and equipment used in the operation and maintenance of the Common Areas and personal property taxes and other charges incurred in connection with such equipment; the cost of all capital improvements to the Common Areas made by Landlord, provided that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized over the useful life thereof and only that portion attributable to such Rental Year shall be included for such Rental Year; coordination and use of the truck docks and loading facilities serving the Shopping Center; repair or replacement of awnings, paving, curbs, walkways, interior and exterior landscaping (including, but not limited to, the park areas located on the Property), drainage, pipes, ducts, conduits and similar items, lighting facilities and the roof; the rental of music program services and loudspeaker systems, including furnishing electricity therefor; providing energy to light, heat, ventilate and air-condition areas in which the Common Areas are located and the maintenance and repair of such equipment; Landlord's management fees (which, if payable to any entity affiliated with Landlord, shall not exceed the arm's length, competitive management fees which are then being paid by any comparable landlord in the Clarksburg, Maryland area which is not affiliated with Landlord), Landlord's storage areas and other management facilities in the Shopping Center or on property adjoining the Shopping Center; cost of heating, ventilation and air-conditioning of Common Areas, water and sewer services, gas, and electricity furnished by Landlord for the Common Areas; all costs and expenses of every nature or kind whatsoever in connection with on-site or off-site facilities, infrastructure, and improvements which serve the Shopping Center; parcel pick-up and delivery services; reasonable legal fees not recovered from other parties, and reasonable accounting fees; fulfillment of Landlord's obligations under one or more various space agreements and under easements, covenants cost-sharing agreements entered into prior to or after the date of this Lease including but not limited to any of the Permitted Encumbrances; and

b. all costs and expenses incurred by or on behalf of Landlord in providing utilities to tenants of the Retail Areas other than, with respect to directly metered electrical service, the cost of such service itself; and

c. administrative costs equal to fifteen percent (15%) of the total of all of the foregoing costs and expenses described in this Section 25.2 (excluding management fees)

If Landlord acquires, constructs or makes available for Common Area purposes land or improvements not shown as part of the Shopping Center on Exhibit A, then Common Areas Costs shall also include all of the expenses itemized above incurred and paid in connection with such additional land or improvements.

25.3 *Method Of Payment.* Common Area Costs shall be paid by Tenant in the following manner:

a. From and after the Rent Commencement Date and thereafter during the Term (including any renewal periods), Tenant shall pay to Landlord, as Additional Rent, on the first day of each calendar month an amount estimated by Landlord to be Tenant's Proportionate Share of Common Area Costs for the period covered by such estimate. This estimated monthly charge may be adjusted by Landlord at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated Common Area Costs.

b. Following the end of each calendar year, Landlord shall furnish Tenant with a statement showing the actual total of Common Area Costs for the preceding year, the actual amount of Tenant's Proportionate Share of Common Area Costs for that year and the payments made by Tenant for that year under Section 25.3a. above, and the estimated amounts payable by Tenant during the then current year. If Tenant's Proportionate Share of Common Area Costs exceeds the estimated payments made by Tenant under Section 25.3a. above, Tenant shall pay Landlord the deficiency within fifteen (15) days after receipt of such statement. If Tenant's estimated payments exceed Tenant's Proportionate Share of Common Area Costs, Tenant shall be credited with any excess estimated payments toward subsequent payments thereafter coming due under Section 25.3a. above, or if the Term of this Lease has expired or been terminated, Landlord shall pay the amount of any such excess estimated payments to Tenant within sixty (60) days after the later to occur of (i) the Lease Expiration Date (or earlier termination of the Term of this Lease) or (ii) the date on which Tenant cures all defaults under this Lease, if any. There shall be an appropriate adjustment of Tenant's Proportionate Share of Common Area Costs (i) as to any partial calendar year which includes the Rent Commencement Date or the Lease Expiration Date, and (ii) in the event that Landlord determines, in Landlord's good faith judgment, that the amount of trash generated by Tenant exceeds the proportionate share of trash attributable to

Tenant's proportionate share of leaseable square feet in the Shopping Center. Landlord's and Tenant's obligations hereunder shall survive expiration of the Term. Any failure by Landlord to timely provide the statement required by this Section 25.3b. shall not relieve Tenant of its obligations to pay Tenant's Proportionate Share of Common Area Costs.

Tenant's failure to pay any sums due hereunder shall constitute a default under this Lease (beyond any applicable notice and cure period) equivalent to a failure to pay Minimum Annual Rent when due.

*25.4 Control of Common Areas.* Landlord shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in Landlord's opinion are desirable and in the best interests of all persons using the Common Areas. Landlord's rights hereunder include without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

Landlord shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to tenants for the sale of merchandise or services, and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. Landlord may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of Tenant and other tenants and occupants of the Shopping Center who use the Common Areas in accordance with the Rules and Regulations then established by Landlord. The rights of Tenant under this Article 25 shall at all times be subject to the rights of Landlord, the other tenants of Landlord and other owners and occupants of the Shopping Center to use the Common Areas in common with Tenant. Tenant shall not create or permit any obstructions in the Common Areas or in any way alter or obstruct the facade of the Premises or of any other part of the Shopping Center, and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Building occupied by Tenant.

*25.5 Rules and Regulations.* Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against Tenant and the other users of the Common Areas, such reasonable and non-discriminatory rules and regulations (including the exclusion of employees' parking from Common Areas) as Landlord may deem necessary or advisable for the proper and efficient operation

and maintenance of the Common Areas and Shopping Center. The rules and regulations may include, without limitation, the hours during which the Common Areas shall be open for use. If incorporated as a part of this Lease as of the effective date of this Lease, Tenant shall comply with the Rules and Regulations attached to this Lease as Exhibit B. Landlord shall provide thirty (30) days written notice to Tenant of any change in the Rules and Regulations after the effective date of this Lease.

25.6 *Employee Parking.* Landlord shall at all times have the right to designate at a particular parking area, if any, to be used by employees of Tenant and other occupants and customers of the Shopping Center and any such designation may be changed by Landlord from time to time. Tenant and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Upon the written request of Landlord, Tenant shall furnish Landlord with an accurate current list of Tenant's and all its employees' automobile license plate numbers within fifteen (5) days after receipt of such notice. If Tenant or its employees fail to park their cars in designated parking areas, Landlord may charge Tenant Twenty-Five Dollars (\$25.00) per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under the provisions of this Section 25.6 shall be payable by Tenant within twenty (20) days after written demand by Landlord.

## 26. DEFAULT BY TENANT /LANDLORD.

26.1 *Events of Default.* Each of the following shall constitute an Event of Default under this Lease:

a. If Tenant is at any time in default of its obligation to pay any Rent or other charges as and when payable hereunder and such failure continues after seven (7) days written notice to Tenant;

b. If Tenant is in default in the prompt and full performance of any of its obligations under this Lease and such default continues more than ten (10) days after written notice specifying the nature of such default; provided, however, that if the County begins to cure such failure during such ten (10) day period but such obligation is of a nature that it cannot with reasonable diligence be cured within such period, and provided the County notifies Landlord of such fact within such ten (10) day period and diligently continues to take all reasonable acts to expeditiously cure such failure, then such period shall be extended for a period of thirty (30) days to effect such cure in such manner.

c. If Tenant vacates or abandons the Premises or otherwise fails to occupy and operate the Premises in accordance with Article 21;

d. (i) If Tenant or any guarantor of this Lease makes a general assignment or general arrangement for the benefit of creditors; or (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant or any guarantor and is not dismissed within thirty (30) days; or (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, a trustee is appointed to take possession of Tenant's assets or if Tenant remains a debtor in possession and such trustee or Tenant transfers Tenant's interest in this Lease, then Landlord shall receive, as additional rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the Rent payable by Tenant hereunder;

e. If in any manner Tenant's interest in this Lease shall pass to another by operation of law;

f. The failure of Tenant to open its store for business to the general public on the date herein required;

g. The occurrence of any other event described as constituting a default elsewhere in this Lease, to which the notice and cure provisions of Article 26.1b shall not apply.

Notwithstanding anything to the contrary set forth in this Section 26.1, if Tenant shall default in the performance of any such covenant or agreement of this Lease two (2) or more times in any twelve (12) month period, then notwithstanding the fact that such defaults have each been cured by Tenant, any further similar default shall be deemed an Event of Default immediately upon its occurrence and there shall be no right to notice of same and no time period for curing the same. Landlord and Tenant acknowledge that the immediately preceding sentence is meant to address the reoccurrence of a particular default for two (2) or more times and not the occurrence of two (2) or more different types of defaults during any such twelve (12) month period.

26.2 *Remedies Upon Event of Default.* On the occurrence of any Event of Default under this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

a. Terminate Tenant's right to possession of the Premises and reenter the Premises by any lawful means, in which case this Lease shall terminate. In such case Tenant shall immediately surrender possession of the Premises to Landlord; or

b. Maintain Tenant's right to possession of the Premises, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due and Landlord shall have the right to occupy or re-let the whole or any part of the Premises for the account of Tenant; or

c. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Maryland.

If Landlord reenters the Premises under the provisions of subparagraph (b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent or other charges that are due or thereafter accruing, or Tenant's liability for damages under any of the provisions hereof. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have in addition to its rights under Section 26.4 hereof, the right, but not the obligation, to remove from the Premises any personal property located therein and to place it in storage at a public warehouse at the expense and risk of Tenant.

Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

It is understood and agreed that this Lease is a lease of real property in a shopping center within the meaning of 11 U.S.C. Section 365(b)(3) of the Bankruptcy Code.

26.3 *Landlord's Damages.* Except as provided for in Paragraph 42 or elsewhere in the Lease, if Landlord elects to terminate this Lease and Tenant's right to possession of the Premises in accordance with the provisions of this Lease:

a. Tenant shall remain liable for (i) the full amount of all Minimum Annual Rent and additional rent which would have accrued until the date



on which this Lease would have expired had such termination not occurred, and any and all damages and expenses incurred by Landlord in reentering and repossessing the Premises, in making good any default of Tenant, in making any improvements to the Premises, in protecting and preserving the Premises, and in reletting the Premises, and any and all reasonable expenses which Landlord may incur during the occupancy of any new tenant, less (ii) the net proceeds of any reletting until the date this Lease would have expired if it had not been terminated. Tenant agrees to pay to Landlord the difference between items (i) and (ii) above for each month during the Term, at the end of such month. Any suit brought by Landlord to enforce collection of such difference for any one month shall not prejudice Landlord's right to enforce the collection of any difference for any subsequent month. Tenant's liability shall survive the institution of summary proceedings and the issuance of any warrant hereunder

b. In addition to the damages determined pursuant to Sections 26.3a. and 26.3b. above, Tenant shall be liable for any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including without limitation, any costs or expenses incurred by Landlord in (a) maintaining or preserving the Premises after such default, (b) recovering possession of the Premises, including reasonable attorneys' fees therefor, and (c) expenses of re-letting the Premises to a new tenant, including necessary renovations or alterations of the Premises, reasonable attorneys' fees incurred, and leasing commissions incurred; plus such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is located.

c. For purposes of this Article 26, all Rent other than Minimum Annual Rent, shall, for purposes of calculating any amount due under the provisions of Section 26.3c. above, be computed on the basis of the average monthly amount of Rent payable by Tenant during the immediately preceding 36-month period, except that if it becomes necessary to compute such rental before such thirty-six (36) months of the Term has expired, then such Rent shall be computed on the basis of the average monthly amount of Rent payable during such shorter period.

26.4 *Fixtures and Personal Property.* In the event of an Event of Default, all of Tenant's Fixtures shall remain on the Premises, and during the period of default Landlord shall have the right to take the exclusive possession of such items and to use them free of charge until all defaults are cured, or, at Landlord's option, to require Tenant to forthwith remove such items.

The rights and remedies given to Landlord in this Article 26 shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws in force when the default occurs.

26.5 *No Waiver.* The waiver by Landlord of any breach by Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach thereof, or of any other term, covenant or condition of this Lease. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of a right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

26.6 *Landlord's Default.* If Tenant institutes legal proceedings with respect to an alleged failure by Landlord to perform its obligations under this Lease, and it is ultimately judicially determined that Landlord has so failed, Landlord shall reimburse Tenant for all reasonable legal fees incurred therein; provided, however, that Tenant may not institute such proceedings unless it shall have first notified Landlord of such failure and Landlord shall not have cured such failure within a thirty (30) day period, provided, further, that if Landlord begins to cure such failure during such thirty (30) day period but such obligation is of a nature that it cannot with reasonable diligence be cured within such period, and provided Landlord notifies Tenant of such fact within such thirty (30) day period and diligently continues to take all reasonable acts to expeditiously cure such failure, then such period shall be extended by the number of days required to effect such cure in such manner.

26.7. *Cure of Landlord's Failure.* If Landlord shall fail to perform any of its obligations under Section 22.2, and such failure directly and adversely affects the condition of the Leased Premises and such failure shall continue for thirty (30) days after Landlord's receipt of written notice to Landlord, Tenant shall have the right, but not the obligation, to cure such failure (but only to the extent necessary to repair or replace the portion or component of the Leased Premises which Landlord is required to maintain) for the account and at the expense of Landlord; provided, however, that if Landlord begins to cure such failure during such thirty (30) day period but such obligation is of a nature that it cannot with reasonable diligence be cured within such period, and provided Landlord notifies Tenant of such fact within such thirty (30) day period and diligently continues to take all reasonable

acts to expeditiously cure such failure, then such period shall be extended by the number of days required to effect such cure in such manner.

27. TENANT'S COVENANTS REGARDING HAZARDOUS MATERIALS

Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (as defined below) upon or about the Shopping Center, or permit Tenant's employees, agents, contractors, invitees (of the Premises) and other occupants of the Premises to engage in such activities upon or about the Shopping Center. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Premises of substances customarily used in the business or activity expressly permitted to be undertaken in the Premises under Section 1, provided: (a) such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises and the ordinary course of Tenant's business therein, strictly in accordance with applicable Law, highest prevailing standards, and the manufacturers' instructions therefor, (b) such substances shall not be disposed of, released or discharged in the Shopping Center, and shall be transported to and from the Premises in compliance with all applicable Laws, and as Landlord shall reasonably require, (c) if any applicable Law or Landlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Landlord), (d) any remaining such substances shall be completely, properly and lawfully removed from the Shopping Center upon expiration or earlier termination of this Lease, and (e) for purposes of removal and disposal of any such substances, Tenant shall be named as the owner and generator, obtain a waste generator identification number, and execute all permit applications, manifests, waste characterization documents and any other required forms.

Tenant shall promptly notify Landlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material on the Premises, (iii) any release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Premises or in violation of this Article, and (iv) any matters where Tenant

acts to expeditiously cure such failure, then such period shall be extended by the number of days required to effect such cure in such manner.

## 27. TENANT'S COVENANTS REGARDING HAZARDOUS MATERIALS

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Tenant shall promptly notify Landlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material on the Premises, (iii) any release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Premises or in violation of this Article, and (iv) any matters where Tenant

is required by Law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. Landlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety Law. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list, certified to be true and complete, identifying any Hazardous Material then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer therefor, and such other information as Landlord may reasonably require or as may be required by Law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant of the Premises, or their employees, agents or contractors, on or about the Shopping Center in violation of the foregoing provisions, Tenant shall immediately, properly and in compliance with applicable Laws clean up and remove the Hazardous Material from the Shopping Center and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's expense (without limiting Landlord's other remedies therefor). Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any court or governmental body having jurisdiction or reasonably required by Landlord. If Landlord or any Lender or governmental body arranges for any tests or studies showing that this Article has been violated, Tenant shall pay for the costs of such tests. If any Hazardous Material is released, discharged or disposed of on or about the Shopping Center and such release, discharge or disposal is not caused by Tenant or other occupants of the Premises, or their employees, agents or contractors, such release, discharge or disposal shall be deemed casualty damage under Section 23 to the extent that the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under such Article.

To the best of Landlord's actual knowledge, the Building will not contain any Hazardous Materials as of the Possession Date of this Lease.

27.1 Article 27 shall survive the expiration or earlier termination of this Lease.

28. ATTORNEYS' FEES.

In case suit shall be brought against Tenant for recovery of possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant / County to be kept or performed, and a breach shall be established, County shall pay to Landlord all expenses incurred therefor, including a reasonable attorney's fee. Likewise, in case suit shall be brought against Landlord for a breach of any Landlord obligation to Tenant under this Lease, and a breach shall be established, Landlord shall pay to County all expenses incurred therefor, including a reasonable attorney's fee.

29. SUBORDINATION, ATTORNMENT.

29.1 *Subordination.* Tenant acknowledges and agrees that its rights under this Lease are subordinate to the lien or security interest of each mortgage or deed of trust (including all future advances made thereunder subsequent to the effective date of this Lease). While such subordination is self-operative and no further instrument of subordination is required to effect same, within fifteen (15) business days after receipt of a written request from Landlord, any first mortgagee or first deed of trust trustee or beneficiary of Landlord, or any lessor of Landlord, Tenant shall execute, acknowledge and deliver to Landlord, or its mortgagee or other party as may request the same, a subordination agreement substantially in the form attached hereto as Exhibit D-2.

29.2 *Attornment.* If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee or purchaser at a foreclosure sale, then Tenant shall upon request, attorn to such transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease, provided such transferee or successor accepts the Premises subject to this Lease.

29.3 *Estoppel Certificate.* Tenant shall, at any time and from time to time, upon not less than fifteen (15) business days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a written statement substantially in the form of Exhibit D.

30. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Rent and timely performing its obligations under this Lease, may quietly have, hold and enjoy the Premises during the Term or any extension thereof; subject, however, to any rights of entry specifically granted to Landlord hereunder, any agreements identified in the Permitted Encumbrances and any other mortgages, deeds of trust, ground or underlying leases, agreements, encumbrances and/or other Matters of Record to which this Lease is subordinate.

31. ADVERTISING AND PROMOTION.

31.1 *Intentionally Deleted*

31.2 *Trade Names, Logos and Advertising Material.* In advertising businesses in the Shopping Center, Landlord shall have the right to the use of Tenant's logo and to name Tenant's store in the Shopping Center.

32. CAPTIONS, JOINT AND SEVERAL LIABILITY.

32.1 *Captions.* The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

32.2 *Intentionally Deleted.*

33. NOTICES.

Wherever this Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by certified mail, return receipt requested, or overnight mail or courier that provides written notice of deliveries, addressed to the parties at the addresses specified in Sections 3.d. and 3.e. hereof. Either party may change such address by written notice to the other as herein provided. Either party may provide notice to the other by facsimile provided that such notice is also given as set forth in the first sentence of this Article 33.

34. OBLIGATIONS OF SUCCESSORS.

Except as otherwise provided herein, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

35. CONSENT OF LANDLORD AND TENANT.

Wherever in this Lease consent or approval is required from either party to any action by the other, such consent or approval shall be given in writing. Whenever in this Lease Landlord's consent is required to be given reasonably, (i) Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is dependent on Landlord obtaining the consent of any other person, agency or authority having the right to withhold its consent pursuant to any agreement or law and such person, agency or authority does withhold its consent, and (ii) if Landlord fails to give any such consent which is required to be given reasonably, Tenant shall be entitled to specific performance in equity and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord be responsible in monetary damages for failure to give consent unless such consent is withheld maliciously or in bad faith.

36. SECURITY DEPOSIT. Intentionally Omitted.

37. MISCELLANEOUS.

37.1 *Relationship of the Parties.* Nothing contained in this Lease shall be deemed or construed to create a partnership of joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant.

37.2 *Severability.* If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37.3 *Corporate Authority; Partnership Authority.* Intentionally Omitted.

37.4 *Entire Agreement.* It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter hereof, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments hereto, are the only agreement between the parties hereto. All



negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease. There are no other representations, covenants or warranties between the parties and any reliance on representations of a party is based solely upon the express representations, covenants and warranties contained in this Lease. Although the printed provisions of this Lease were drawn by Landlord, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant.

37.5 *Governing Law.* The laws of the State of Maryland shall govern the validity, performance and enforcement of this Lease. The parties agree to freely elect to be tried by a court of competent jurisdiction without a jury in Montgomery County, Maryland where the Leased Premises is located.

37.6 *Waiver or Consent Limitations.* A waiver of any breach of default under the Lease shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

37.7 *Force Majeure.* The occurrence of any of the following events shall excuse performance of such obligations of Landlord or Tenant as are rendered impossible or reasonably impracticable to perform while such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefore; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Minimum Annual Rent, Additional Rent or any other Rent provided for in this Lease (unless the provisions of Article 23 apply) or excuse such obligations as this Lease may nevertheless otherwise impose on the party to obey, remedy or avoid, despite such event.

37.8 *Waiver of Redemption Rights.* Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted from or dispossessed of the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

37.9 *Amendments.* To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be in writing and executed by both parties in the same manner as the Lease itself.

37.10 *Right to Enter.* Within the last six months of the Term of the Lease, Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders.

37.11 *Definition of Landlord.* As used in this Lease the term "Landlord" means only the current owner of the fee title to the Shopping Center or the leasehold estate under a ground lease of the Shopping Center at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Shopping Center is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer.

37.12 *Tenant's Financial Condition.* Intentionally Omitted.

37.13 *Performance of Landlord's Obligations by Mortgagee.* Tenant shall accept performance of any of Landlord's obligations hereunder by any Mortgagee.

37.14 *Waiver of Jury Trial.* Landlord and Tenant hereby mutually waive any and all rights which either may have to request a jury trial in any proceeding between them at law or in equity.

37.15 *Holding Over.* County shall not hold over upon termination of this Lease, as provided for herein, and if it does it shall be subject to the penalties and proceedings of Maryland law, which shall be a minimum of one and one-half of the rental payable during the last month of the term. Notwithstanding the foregoing, the words "one and one-half" shall be deemed to be omitted from the preceding sentence if, during negotiations to enter into a new lease, the Landlord waives such requirement in writing.

37.16 *No Accord and Satisfaction.* The acceptance by Landlord of any sums from Tenant (whether as Rent or otherwise) in amounts which are less than the amounts due and payable by Tenant hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between Landlord and Tenant regarding sums due and payable by Tenant hereunder, unless Landlord specifically deems it as such in writing.

38.     BROKERS.

Landlord and Tenant each represents and warrants to the other that, except as hereinafter set forth, neither of them has employed any broker in procuring or carrying on any negotiations relating to this Lease. Landlord and Tenant shall indemnify and hold each other harmless from any loss, claim or damage relating to the breach of the foregoing representation and warranty. Landlord recognizes only CBRE, as broker in connection with this Lease. Landlord shall pay a leasing commission to the aforementioned broker pursuant to the terms of a separate agreement.

39.     CONTINGENCIES.

This Lease shall be a binding and enforceable agreement from and after the date of full execution hereof. Notwithstanding the foregoing, the obligations of Landlord hereunder to commence construction of the Premises and deliver the same to Tenant shall be subject to and contingent on the occurrence of all of the following (each a "Contingency" and collectively the "Contingencies"):

a.     Landlord shall have obtained construction financing for the Shopping Center;

b.     Landlord shall have obtained a building permit to construct the improvements comprising the Shopping Center, including, but not limited to, the Building and Landlord's Work in the Premises, and Landlord shall have obtained all other governmental approvals necessary or required to perform the obligations of Landlord hereunder;

c.     Landlord shall have entered into binding and enforceable leases for the occupancy of no less than fifty percent (50%) of the Retail Areas Floor Area of the Shopping Center; and

d.     The tenant operating as a grocery store shall have opened for business in the Shopping Center or be actively fixturing its store in anticipation of opening and notified Landlord that it intends to open for business within thirty (30) days after delivery of such notice to Landlord,

In the event that any of the foregoing Contingencies shall not be satisfied on or before December 31, 2013, Landlord shall have the right, in its sole and exclusive discretion, to (i) extend the date(s) herein on which Landlord shall deliver the Premises to Tenant with written notice to the County not later than ten

(10) business days following such date, (ii) waive any such Contingency or Contingencies and proceed with the obligations of Landlord as set forth in this Lease, or (iii) terminate this Lease by written notice to Tenant, which such notice of termination shall be effective twenty (20) days after receipt thereof by Tenant.

40. **OPTION(S) TO EXTEND TERM.**

Provided that Tenant is not then in default (as defined in Paragraph 26 hereof), has not been in default during the Term of this Lease and is open and operating in the entire Premises as Montgomery County Liquors at the time Tenant delivers notice of its intent to exercise the Renewal Period, as hereinafter defined, and at the time of the commencement of the Renewal Period, Tenant may extend the Term of this Lease for two (2) successive, additional five (5) year periods (each a "Renewal Period" and collectively "Renewal Periods") after the expiration of the initial Term; provided, however, after the proper and timely exercise of the first such Renewal Period there shall be only one (1) Renewal Period remaining and after the proper and timely exercise of the second Renewal Period there shall be no remaining rights or options whatsoever to extend the Term of this Lease. The Renewal Periods shall be personal to and exercisable only by the original named Tenant herein and only by written notice given by Tenant to Landlord at least nine (9) months prior to expiration of the initial Term or then current Renewal Period, whichever is applicable. In the event that Tenant does not timely exercise the right and option to extend the Term for the Renewal Period, or in the event Tenant assigns this Lease or any interest herein, said Renewal Periods shall be null and void and of no further force or effect, time being of the essence in the exercise of the Renewal Periods and it being acknowledged and agreed by Tenant that Landlord shall be entitled to rely on any failure by Tenant to give written notice of its exercise of its Renewal Period(s) by the date set forth herein for such exercise thereof.

41. **NON-DISCRIMINATION**: Landlord agrees to comply with the non-discrimination policies in County contracts as required by Section 11B-33 and Section 27 of the Montgomery County Code 2004, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the County that in accordance with applicable law; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, sex, martial status, national origin, ancestry, disability, sexual orientation or genetic status.

42. **NON-APPROPRIATION**: Landlord acknowledges that the County has appropriated funds only for payment of rent for the first year of the term of this

Lease. Landlord further acknowledges and agrees that the County's obligations under the Lease, to pay rent in future years, is subject to the appropriation of funding for such purpose in future years by the County. The term County, as used herein, includes the County Executive, the County Council, and all County employees and agents of the County. The County makes no warranty, guarantee, or representation and undertakes no obligation to request or obtain an appropriation of funds in future years for payment of rent. Landlord acknowledges and agrees that the County's budget constitutes an executive and legislative function that cannot be contracted away. The Landlord irrevocably waives any claim for unpaid rent or other damages, of any kind or nature whatsoever, against the County if funds are not appropriated in future years for payment of rent, including any claim that the failure to appropriate such funds constitutes a breach of any express or implied covenant of good faith and fair dealing or any other implied obligation on the part of the County to appropriate funds.

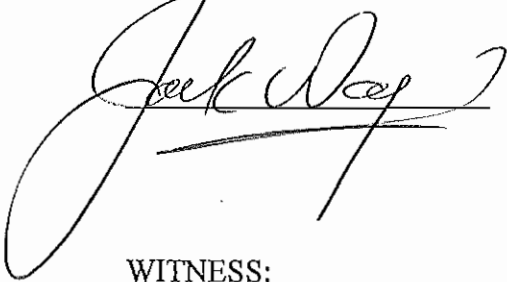
43. If the County, in its sole discretion, elects not to appropriate funds for payment of rent in future years of this Lease, then this Lease shall automatically terminate at 11:59 p.m. on the last day for which funding is appropriated.

44. The County's fiscal year begins July 1 and ends June 30. It is anticipated that the final action on the County's budget will take place each May, for the upcoming fiscal year, between the 15<sup>th</sup> and 31<sup>st</sup> of the month. The County shall give the Landlord notice, in writing, seven (7) business days after the County makes a final decision not to appropriate funds sufficient for the County to pay rent for a full fiscal year under this Lease. Such notice will clearly state the number of months, if any, in the upcoming fiscal year for which the County has appropriated funds sufficient to pay rent and will state the date by which the County will vacate the Leased Premises. If this Lease is terminated under this section, the Landlord, in addition to waiving all claims for any damages, shall not be entitled to reimbursement of any kind, whether for the cost of unamortized build-out, fit, finishes, or for rent abatement, or other expenses incurred by Landlord under this Lease.

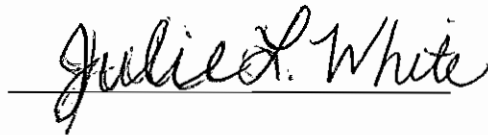
45. PUBLIC EMPLOYMENT: Landlord understands that unless authorized under Chapter 19A and Section 11B-52 of the Montgomery County Code (2004), as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

LANDLORD AND TENANT have executed this Lease under seal as of the day and year set forth below.

WITNESS:

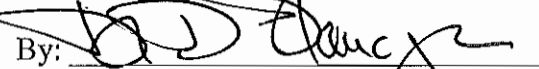


WITNESS:



LANDLORD:


CLARKSBURG VILLAGE CENTER,  
LLC, a Maryland limited liability company

By: 

Name: DAVID D. FLANAGAN

Title: Manager  
TENANT / COUNTY:

MONTGOMERY COUNTY,  
MARYLAND

By:   
Ramona Bell-Pearson, Assistant  
Chief Administrative Officer

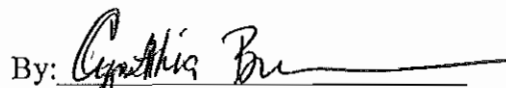
APPROVED AS TO FORM AND  
LEGALITY

OFFICE OF THE  
COUNTY ATTORNEY

By:   
Associate County Attorney

Date: 9/18/12

RECOMMENDED

By:   
Cynthia Brenneman, Director  
Office of Real Estate

Date: 9/18/12

**EXHIBIT A**

**PREMISES PLAN; SHOPPING CENTER**

[THE ATTACHED SITE PLAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO CREATE NOR SHALL THE ATTACHED CREATE ANY REPRESENTATIONS OR WARRANTIES THAT THE SHOPPING CENTER WILL BE CONSTRUCTED AS DEPICTED IN THE SITE PLAN OR THAT ANY TENANTS NAMED THEREIN WILL OPEN FOR BUSINESS IN THE SHOPPING CENTER]

## **EXHIBIT B**

### **CLARKSBURG VILLAGE CENTER Clarksburg, Maryland**

#### **RULES AND REGULATIONS**

The following Rules and Regulations cover Clarksburg Village Center (the "Center"), and shall remain in full force and effect until Tenant is notified in writing by Landlord of any changes or amendments.

1. For purposes of these Rules and Regulations, the term "Center Management" shall mean the duly designated representative of Landlord managing the Center.
2. The requirements of tenants will be attended to only upon notice to the office of the Center Management. Landlord's employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of the Landlord or the Center Management.
3. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, reasonably designated for such purposes by Landlord. Tenant shall not deliver any merchandise to or collect any refuse from the Premises in a manner which will interfere with other tenants of the Center.
4. The delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be subject to such reasonably and uniformly applied rules and regulations as, in the judgment of Landlord, are necessary for the proper operation of the Premises or the Center.
5. Tenant shall store all Tenant's trash and garbage in approved receptacles, within the Premises or in designated dumpster, and shall be responsible for the removal and disposal of refuse and rubbish from the Premises. Tenant shall not permit the accumulation of rubbish, trash, garbage, debris, boxes, cans, or other refuse of any kind or description in the Premises or in any area immediately adjoining the Premises other than Tenant's designated dumpster, or in any part of the Center. Any dumpster serving one or more tenants of the Center will be of a type and be located in areas approved by Landlord.
6. No antenna, earth station, or microwave dish shall be erected on the roof or exterior walls of the Premises, or on the grounds without, in each instance, the written consent of Landlord. Any antenna, station, or dish so installed without such written consent shall be subject to removal without notice at any time, at Tenant's sole risk and expense.
7. Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
8. The sidewalks and loading areas immediately adjoining the Premises shall be kept clean and free from snow, ice, dirt, and rubbish by Tenant shall not place or permit any obstruction or merchandise to be placed in such areas. Tenant shall not sweep dirt and rubbish into the common areas or public spaces.
9. Tenant's employees shall park their vehicles only in those portions of the parking area designated by Landlord for that purpose. At Landlord's request, tenant shall furnish Landlord with state automobile license numbers assigned to Tenant's vehicle(s) and vehicles of Tenant's employees, and shall thereafter notify Landlord of any change within five (5) days after such changes occur. In the event Tenant or its employees fail to park their vehicles in designated parking areas as specified above, Landlord, at its option, shall charge Tenant Twenty-Five Dollars (\$25.00) per day per vehicle parked in any area other than those designated thereof as liquidated damages, which shall be additional rent due under this Lease. Tenant shall not allow storage of any vehicles on the property.
10. The plumbing facilities shall not be used for any other purpose than that for which they were constructed, and no foreign substance of any kind shall be thrown therein. The expenses of any breakage, stoppage, or demand resulting from a violation of this provision shall be borne by Tenant who shall, or whose employees, agents, or invitees shall have caused it.
11. Tenant shall not burn any trash or garbage of any kind in or about the Premises or the Center.
12. Landlord reserves the right to require Tenant to discontinue any display or demonstration in or from the Premises, which, in Landlord's reasonable opinion, creates an interference with the use



of the public passageways of the Center or constitutes a nuisance or an unhealthy or unsafe condition.

13. Tenant shall at all times maintain an adequate number of suitable fire extinguishers on its Premises for use in case of localized fires, including electrical or chemical fires.
14. Tenant shall immediately notify the Center Management of any serious breakage, sickness, fire, or disorder which comes to its attention in its Premises or in any of the common areas of the Center.
15. The sidewalks, entrances, passages, courts, or corridors shall not be obstructed or encumbered by a Tenant or used for any purpose other than ingress or egress to and from the Premises; nor shall Tenant open its doors, or position any object of any kind in such manner as to project outside the Premises and thereby restrict or impede in any way the public passageways. No showcases or other objects shall be positioned or affixed outside the Premises, nor placed in or on vestibules, sidewalks, entrances, passages, courts, or corridors.
16. No bicycles, vehicles, or animals (except for service animals, if needed) of any kind shall be brought into or kept in or about Tenant's Premises. No Tenant shall cause or permit any unusual or objectionable sounds or odors to be produced on or emanate from the Premises.
17. Tenant shall not permit the use in its Premises of any device or instrument, such as a sound reproduction system, television sets, phonographs, or radios or excessively bright, changing, flashing, flickering, moving lights or lighting devices or any similar devices, the effect of which shall be audible or visible beyond the confines of its Premises, nor shall Tenant permit any act or thing upon its Premises disturbing to the normal sensibilities of other tenants.
18. Tenant shall keep clean the inside and outside of all glass in the doors and show windows and all exterior store front surfaces of its Premises; shall replace at its own expense with glass of like kind and quality any plate glass of its Premises which may become cracked or broken within twenty-four hours.
19. Canvassing, soliciting, and peddling in the Center is prohibited, and each Tenant shall cooperate in preventing same. Tenant shall not solicit business in the parking or other common areas of the Center, or distribute handbills or other advertising matter in or upon automobiles parked in the Center, provided that the foregoing shall not prohibit Tenant from using direct mail solicitation or advertising in the regular communications media.
20. Landlord shall have the right to prohibit any advertising by a Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Center or its desirability as a location for stores or offices, and upon written notice from Landlord, such Tenant shall refrain from or discontinue such advertising.
21. No Tenant shall occupy or permit any portion of the Premises to be used for the possession, storage, manufacture, or sale of narcotics or drugs in any form (except for a Tenant whose primary business is the operation of a pharmacy), or for any unlawful purpose. No Tenant shall engage or pay any employees on its Premises, except those actually working for Tenant on said Premises, nor advertise for laborers giving an address at said Premises. No Tenant shall use any space in the Center for manufacturing, for lodging or sleeping, or for the sale at auction of merchandise, goods, or property of any kind.
22. Landlord reserves the right to exclude from the Center at any time disorderly or undesirable persons and, during the hours when the Center is not open for business, any person who does not identify himself or herself. Tenant shall be responsible for maintaining with the Center Management an up-to-date list of Tenant's employees and for giving reasonable advance notice to the Center Management of invitees expected outside of regular business hours.
23. Employees of Landlord, other than those expressly authorized, are prohibited from receiving any packages or other articles delivered to the Center for Tenant. Should any such employee receive any such package or article, he or she in so doing shall be acting as agent of Tenant, and not of Landlord.
24. Tenant shall not permit others to connect to the electrical or water supply on the Premises without prior written notice and approval of the Center Management.
25. Tenant shall ensure that all entrance doors and windows in its Premises shall be locked when said Premises are not in use.
26. No Tenant shall mark, paint, bore into, cut, or in any way deface any part of the Premises or the Center of which it forms a part, without the consent of the Landlord. No wires shall be installed

except in conduits, ducts, or outlets established for that purpose, unless prior written consent of the Landlord has been obtained. If any Tenant restricts access to piping, duct, or distribution system(s) with finishes or fixtures, such Tenant shall be responsible for providing access thereto, at its expense, upon request of Landlord.

27. Tenant shall keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises.
28. Absolutely no penetrations of the roof shall be made without prior written consent of Landlord. Such work shall be done solely by the roofing contractor designated by Landlord, whose name shall be made immediately available to Tenant, and with a representative of Landlord present at all times.
29. Tenant and Invitees shall not bring into the Building flammable materials such as gasoline, kerosene, naphtha and benzene, or explosives or firearms or any other article of intrinsically dangerous nature except for customary amounts of customary office supplies, which shall be stored and used in accordance with applicable laws and regulations and good business practice.
30. Tenant shall comply with all applicable federal, state and municipal laws and shall not directly or indirectly make any use of the Premises which may be prohibited thereby or which shall be dangerous to person or property or shall increase the cost of insurance or require additional insurance coverage.
31. If there is any conflict between the terms of the Lease and terms of this Exhibit, the terms of the Lease shall control.
32. Landlord reserves the right to rescind, amend, alter, or waive any of the foregoing rules and regulations at any time when, in its reasonable judgment, it deems it necessary, desirable, or proper for its best interest and for the best interest of the tenants, and no such rescission, amendment, alteration, or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant. Landlord shall not be responsible to any Tenant for the nonobservance or violation by any other Tenant of any of these rules and regulations at any time. Landlord agrees that any new rule or regulation applicable to Tenant shall be reasonable and non-discriminatory and shall not unreasonably interfere with Tenant's use and occupancy of the Premises.
33. The tenant shall not affix or post upon the glass panes, doors, or any area visible from the exterior of the premises, any signs, advertising placards, insignia, decoration, descriptive materials or any other like item(s) without having first received the written approval of Landlord.
34. The tenant shall not allow the use of, or permit the use of any objectional medium, including, but not limited thereto, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts, nor any noise level from employees, guests or guests within the Center which is in any manner audible or visible outside of the Premises.

## EXHIBIT C

### **LANDLORD'S WORK**

This Exhibit is attached to and made a part of that certain Lease Agreement dated as of \_\_\_\_\_, 2012 (the "Lease"), by and between CLARKSBURG VILLAGE CENTER, LLC, a Maryland limited liability company ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"). Terms used but not defined in this Exhibit shall have the meaning ascribed to them in the Lease.

Except as otherwise set forth in the Lease, in which case the Lease will control the following shall occur:

1. Tenant's Authorized Representative. Tenant designates \_\_\_\_\_ ("Tenant's Authorized Representative") as the person authorized to initial all plans, drawings, change orders and approvals pursuant to this Exhibit. Landlord shall not be obligated to respond to or act upon any such item until such item has been initialed by Tenant's Authorized Representative.

2. Initial Improvements. The items listed in Schedule 1 (the "Vanilla Box Items") constitute all work to be provided by and at Landlord's expense in connection with the initial construction of the Premises (also referred to as "Landlord's Work"). Except as expressly described in Schedule 1, Landlord shall not have any obligation whatsoever with respect to the finishing of the Premises for Tenant's use and occupancy, and the Premises shall be delivered containing no improvements or property of any kind other than Landlord's Work. All work to be performed in initially finishing and completing the Premises (and not expressly described as Landlord's Work) shall be performed by Tenant ("Tenant's Work") pursuant to this Exhibit C and Article 8 (and all other applicable provisions including, insurance, damage and indemnification provisions) of the Lease and such work shall be deemed to be improvements for all purposes of the Lease. Tenant's taking of possession of the Premises shall constitute Tenant's acknowledgment that the Premises are in good condition and that all obligations of Landlord have been fully satisfied.

3. Costs.

Landlord shall be responsible for all costs incurred in completing Landlord's Work as contemplated herein, and Tenant shall be responsible for all costs and expenses incurred in connection with Tenant's Work and finishing the Premises for the contemplated use

4. Schedule.

(a) If any plans and drawings are prepared by Landlord's architect or engineer, such plans and drawings will be prepared on Tenant's behalf and Tenant shall be solely responsible for the timely completion of all plans and drawings and for their compliance with all laws and governmental regulations. Certain plans and specifications for the Shopping Center are available for Tenant's inspection at Landlord's offices. All plans shall be prepared by a licensed architect and engineer approved by Landlord, shall be in a form sufficient to secure the approval of government authorities with jurisdiction over the approval thereof, and shall be otherwise satisfactory to Landlord.

(b) Tenant shall prepare and submit to Landlord a final space plan and all specifications, details, finishes (including, paint and carpet selections), elevations and sections, all as approved by Landlord and Tenant within ten (10) days after the Lease has been fully executed. Such space plan shall indicate partition and space layout and proposed fixturing, door location, special equipment types, materials and colors, reflected ceiling plan (including lighting, materials and sprinkler heads), floor load requirements exceeding fifty (50) pounds per square foot live load, telephone and electrical outlet locations, a color rendering of the proposed storefront and signage. Such storefront and signage shall be unique, individual and consistent with the first-class nature of the Shopping Center.

(c) Tenant shall submit to Landlord final architectural and engineering working drawings approved by Tenant within thirty (30) days after the Lease has been fully executed. Such architectural working drawings shall include: master legend, construction and floor plan, reflected ceiling plan, telephone and electrical outlet layout and usage system, finish plan, sign, window and storefront details (if any), and all architectural details, elevations, specifications and finishes necessary to construct the Premises. Said drawings, when approved by Landlord, are referred to herein as the "Final Construction Drawings."

(d) The deadlines specified in this Paragraph 4 shall apply whether plans and drawings are prepared by Landlord's architect or engineer or an architect or engineer selected by Tenant.

All deadlines must be met in order to allow Landlord sufficient time to review plans and drawings, discuss with Tenant any changes thereto which Landlord believes to be necessary or desirable, and complete the Premises within the desired time frame provided pursuant to the Lease. The parties intend for each such deadline to be the applicable deadline, even if any such deadline is before the date the Lease is executed. Tenant acknowledges that time is of the essence in proceeding with the design and construction of the Premises and Tenant agrees to review and finally approve each and every submission from Landlord regarding the Premises and to provide Landlord with all materials or information requested by Landlord within five (5) business days after Tenant's receipt of any submission or request.

5. Approval. All plans and drawings (and changes thereto) shall be subject to Landlord's written approval. Such approval shall not constitute either (a) approval of any delay caused by Tenant or a waiver of any right or remedy that may arise as a result of such delay, or (b) Landlord's representation that such approved plans, drawings or changes comply with all laws and governmental regulations. Any deficiency in design or construction, although same had prior approval of Landlord, shall be solely the responsibility of Tenant. All materials and equipment furnished by Tenant shall be new and all work shall be done in a first-class workmanlike manner.

6. Change Orders. If Tenant requests any change or addition to the work or materials after Landlord's approval of the final space plan, then Landlord shall not be obligated to approve such change or addition unless Landlord approves in writing the same in its sole and absolute discretion. All additional expenses attributable to any change order requested by Tenant and approved by Landlord, shall be payable by Tenant. If Landlord submits an estimate of Landlord's additional expenses attributable to a change order, then Tenant shall pay such estimated additional expenses prior to the performance of the work contemplated by such change order. If the actual additional expenses attributable to such change order exceed such estimated additional expenses, then Tenant shall pay the amount of such excess no later than ten (10) days after Tenant's receipt of a bill therefor. If such estimated additional expenses exceed the actual additional Landlord's expenses attributable to such change order, then the amount of such excess shall be credited against the first installment(s) of rent.

7. General Requirements.

(a) Tenant construction shall proceed only on the basis of approved drawings. Changes that occur during actual construction that differ from the approved drawings will require alterations at Tenant's expense to restore compliance with approved drawings. No drawings are considered "approved" unless they bear Landlord's signature of approval. Tenant will be responsible for paying for Landlord's review of documents.

(b) Landlord shall have no obligation or responsibility to Tenant in respect of minor deviations in the actual dimensions of the Premises. Tenant shall have the affirmative obligation to conduct an on-site verification of all measurements and dimensions prior to letting any contracts for the performance of Tenant's Work and prior to ordering the fabrication of any trade fixtures.

(c) Upon Landlord's approval of the Final Construction Drawings, Tenant may be required to submit the following:

- (1) Names of all contractors and subcontractors which Tenant shall use or employ in connection with Tenant's Work (all of which shall be subject to Landlord's approval);
- (2) Proof of financial ability;
- (3) Contractor's/subcontractors' bonds;
- (4) Tenant insurance coverage;
- (5) Payment for Tenant's Work to be performed by Landlord at Tenant's expense, if any
- (6) Copy of building permit(s);
- (7) Completion schedule from Tenant's contractor; and
- (8) Proof of utility application/deposit to Landlord.

8. Time for Commencement and Completion of Tenant's Work. Tenant will commence construction of Tenant's Work upon substantial completion of Landlord's Work or as designated by Landlord and at a time and in a manner which will not interfere with completion of any remaining portion of Landlord's Work, and will perform and complete Tenant's Work in compliance with such rules and regulations as Landlord and its architect and contractor, or contractors, may make.

9. Security for Tenant's Work. Landlord will require Tenant, before entering on the Premises for such purpose, to give Landlord proof satisfactory to Landlord of Tenant's financial ability to complete and fully pay for Tenant's Work prior to opening for business; or, in lieu thereof, to furnish to Landlord a completion bond in an amount satisfactory to Landlord guaranteeing the completion of Tenant's Work free of mechanics' and materialmen's liens.

10. Remedies for Tenant's Failure or Delay to Submit Plans or Perform Work. If Tenant fails or omits to make timely submissions to Landlord of any plans or specifications, or delays in submitting or supplying information, or delays in giving authorizations, or fails or omits to make timely payments required hereunder, or delays in performing or completing Tenant's Work (collectively "Tenant Delay"), or in any manner delays or interferes (or allows same) with the performance of Landlord's Work, then Landlord, in addition to any other remedy Landlord may have pursuant to the provisions of Article 26 of the Lease or at law or in equity, may pursue any one or more of the following remedies:

(a) Until Tenant shall have completed Tenant's Work, Landlord at its sole option may give Tenant at least fourteen (14) calendar days written notice that if a specific failure, omission or delay is not cured by the date therein stated, the Lease shall be deemed cancelled and terminated. If Tenant shall fail to comply with such notice, the Lease shall, on the date stated in such notice, ipso facto be cancelled and terminated, without prejudice to Landlord's rights hereunder.

(b) Landlord at its sole option may, after written notice of its intention to do so, at Tenant's cost and expense, including expense for such overtime as Landlord's representative may deem necessary, proceed with the completion of any such plans or specifications or Tenant's Work, as the case may be, and such performance by Landlord shall have the same effect hereunder as if the desired plans, specifications, information, approval, authorization, work or other action by Tenant has been done as herein required.

(c) Landlord may give written notice to Tenant (notwithstanding that such a notice is not otherwise required hereunder) that the Term of the Lease will be deemed to have commenced, on the date to be therein specified, when the same would have commenced if Tenant had performed timely, and Landlord shall be entitled to be paid all sums payable under the Lease and any other charges which are payable thereunder by Tenant, during the Term.

(d) Landlord may require Tenant to pay to Landlord, as additional rent, the cost to Landlord of completing the Premises in accordance with the terms of the Lease over and above what would have been such cost had there been no such failure, omission or delay.

(e) Landlord may apply or retain all or any part of the Security Deposit to complete the Premises or to reimburse Landlord for any sum which Landlord may have disbursed in any manner in connection therewith and, in case of such application or retention, Tenant shall, on demand of Landlord, pay to Landlord the Security Deposit so that the same shall be restored to its original amount.

In exercising any of the foregoing remedies, Landlord shall be entitled to have recourse to any bond provided by Tenant as required hereunder.

11. Obligations of Tenant Before Lease Term Begins. Tenant shall perform promptly such of its monetary and other obligations contained in this Exhibit and the Lease as are to be performed by it whether the same accrue before or after the Rent Commencement Date.

12. Completion of Tenant's Work. At such time as Tenant's Work shall be completed, Tenant, at its sole cost and expense and without cost to Landlord shall:

(a) Furnish evidence satisfactory to Landlord that all of Tenant's Work has been completed and paid for in full (and such work has been accepted by Landlord), that any and all liens therefor that have been or might be filed have been discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise) or waived, and that no security interests relating thereto are outstanding;

(b) Reimburse Landlord for the cost of any Tenant's Work done for Tenant by Landlord;

(c) Furnish to Landlord all certifications and approvals with respect to Tenant's Work that may be required from any governmental authority and any board of fire underwriters or similar body for the use and occupancy of the Premises;

(d) If applicable, furnish Landlord with one (1) set of mylar transparent reproducible "as drawn" drawings of the Premises and one (1) set in an electronic computer aided design ("CAD") format which is compatible with Landlord's CAD system;

(e) Furnish to Landlord the insurance required by Article 14 of the Lease;

(f) Furnish a certification from Tenant's architect certifying that all work performed in the Premises is in accordance with the working drawings and specifications approved by Landlord;

(g) Furnish all guaranties and/or warranties in accordance with this Exhibit; and

(h) If applicable, furnish an HVAC air balancing report (reasonably satisfactory to Landlord).

13. Work Standards. All of Tenant's Work shall be done and installed in compliance with all applicable Laws, including, but not limited to, Montgomery County LEED requirements, and with the overall design and construction standards of the Shopping Center.

14. Permits. As expeditiously as possible, Tenant shall file all applications, plans and specifications, pay all fees and obtain all permits, certificates and other approvals required by the jurisdiction in which the Shopping Center is located and any other authorities having jurisdiction in connection with the commencement and completion of Tenant's Work, and diligently and in good faith pursue same so that all permits and approvals are issued as soon as practicable. If minor modifications are at any time required by government authorities to any such plans or specifications, then Tenant shall make such modifications. Tenant shall permit Landlord to assist Tenant in obtaining all such permits and other items. Tenant shall obtain a certificate of occupancy and all other approvals required for Tenant to use and occupy the Premises and to open for business to the public. Copies of all building permits/occupancy permits are to be forwarded to Landlord.

15. Contractor Insurance. Tenant's contractors and subcontractors shall be required to provide, in addition to the insurance required of Tenant pursuant to Article 14 of the Lease, the following types of insurance:

(a) Builder's Risk Insurance. At all times during the period between the commencement of construction of Tenant's Work and the date on which Tenant opens the Premises for business with the public with a valid certificate of occupancy in place, Tenant shall maintain, or cause to be maintained, casualty insurance in Builder's Risk Form covering Landlord, Landlord's architects, Landlord's contractor or subcontractors, Tenant and Tenant's contractors, as their interest may appear, against loss or damage by fire, vandalism, and malicious mischief and other such risks as are customarily covered by the so-called "broad form extended coverage endorsement" upon all Tenant's Work in place and all materials stored at the site of Tenant's Work, and all materials, equipment, supplies and temporary structures of all kinds incident to Tenant's Work and builder's machinery, tools and equipment, all while forming a part of, or on the Premises, or when adjacent thereto, while on drives, sidewalks, streets or alleys, all on a completed value basis for the full insurable value at all times. Said Builder's Risk Insurance shall contain an express waiver of any right of subrogation by the insurer against Landlord, its agents, employees and contractors.

(b) Worker's Compensation. At all times during the period of construction of Tenant's Work, Tenant's contractors and subcontractors shall maintain in effect statutory worker's compensation as required by the jurisdiction in which the Shopping Center is located.

16. Contractor Liability. Tenant assumes the responsibility and liability for any and all injuries or death of any or all persons, including Tenant's contractors and subcontractors, and their respective employees, and for any and all damages to property caused by, or resulting from or arising out of any act or omission on the part of Tenant. Tenant's contractors or subcontractors or their respective employees, in the prosecution of Tenant's Work, and with respect to such work, agree to indemnify and save free and harmless Landlord from and against all losses and/or expenses, including reasonable legal fees and expenses which they may suffer or pay as the result of claims or lawsuits due to, because of, or arising out of any and all such injuries or death and/or damage, whether real or alleged; and Tenant and Tenant's contractors and/or subcontractors or their respective insurance companies shall assume and defend at their own expense all such claims or lawsuits. Tenant agrees to insure this assumed liability in its policy of Broad Form Commercial General Liability insurance and the certificate of insurance or copy of the policy that Tenant will present to Landlord shall so indicate such contractual coverage.

17. Coordination. Tenant's Work shall be coordinated with Landlord's Work and any other work being performed by Landlord and other lessors in the Shopping Center so that Tenant's Work will not interfere with or delay the completion of any other construction work in the Shopping Center.

18. Roof. Landlord retains the sole right to disallow any and all roof penetrations by Tenant and roof installation of equipment and/or structures by Tenant.

19. Loads. No item shall be mounted on or hung from the interior or exterior of the Shopping Center by Tenant without Landlord's prior written approval. If Tenant desires to mount or hang anything, Tenant shall notify Landlord of the loads involved and shall pay all costs involved.

20. Ducts. Tenant shall permit Landlord or its agent to install, maintain, repair and replace in the ceiling space and/or under the concrete slab, adjacent to demising partitions and free standing columns, electrical, water or other lines and/or ducts that may be required to serve the common areas or others in the Shopping Center.

21. Contractor Responsibilities. It shall be Tenant's responsibility to cause each of Tenant's contractors and subcontractors to:

(a) Maintain continuous protection of any premises adjacent to the Premises in such a manner (including the use of lights, guardrails, barricades and dust-proof partitions where required) as to prevent any damage to Landlord's Work or said adjacent premises by reason of the performance of Tenant's Work.

(b) Secure all parts of Tenant's Work against accident, storm, and any other hazard. However, no barricades or other protective device shall extend more than two (2) feet beyond the Premises. In addition to the foregoing, Tenant's barricade or other protective device shall be attractive in appearance, shall extend across the frontage and full height of the Premises and shall be of materials approved by Landlord. Such partition shall not interfere with Landlord's completion of common areas of the Shopping Center.

(c) If Tenant's construction is not complete so that the public is protected, Landlord at its sole discretion may require Tenant to shield the Premises from the public view, or Landlord may erect a temporary barrier across the entire storefront and charge Tenant one hundred dollars (\$100.00) per linear foot of barrier.

(d) Comply strictly with Landlord's Contractors Rules and Regulations and Procedures, if any, and Tenant agrees to be responsible for any violations thereof.

(e) Remove and dispose of, at Tenant's sole cost and expense, at least daily and more frequently as Landlord may direct, all debris and rubbish caused by or resulting from Tenant's Work, and upon completion, to remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining on any part of the Shopping Center or in proximity thereto which was brought in or created in the performance of Tenant's Work (including stocking refuse). If at any time Tenant's contractors and subcontractors shall neglect, refuse or fail to remove any debris, rubbish, surplus materials, or temporary structures, Landlord at its sole option may remove the same at Tenant's expense without prior notice.

(f) Use only the Premises for the performance of Tenant's Work. Entry into areas unrelated to the performance of Tenant's Work is prohibited.

(g) Guarantee that the work done by it will be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Tenant shall also require that any such contractors and subcontractors shall be responsible for the replacement or repair without charge for any and all work done or furnished by or through such contractors or subcontractors which becomes defective within one (1) year after completion. Replacement or repair of such work shall include, without charge, all expenses and damages in connection with such removal, replacement, or repair of all or any part of such work, or any part of the Shopping Center which may have been damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship or with respect to Tenant's Work shall be contained in the contract or subcontract, which shall provide that said guarantees or warranties shall inure to the benefit of both Landlord and Tenant and be directly enforceable by either of them. Tenant covenants to give to Landlord any assignment or other assurance necessary to effect such right of direct enforcement.

22. Utilities. In connection with utility service to the Premises, all applications, deposits, installation charges and arrangement for the same (except those provided by Landlord) shall be the sole responsibility of Tenant. From and after the Rent Commencement Date, all utility charges shall be paid pursuant to the terms of the Lease.

Initials of:  
Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

## SCHEDULE 1 TO EXHIBIT C

Except as otherwise set forth in the Lease, in which case the Lease will control the following shall occur:

### I. GENERAL

This Schedule 1 to Exhibit C describes the complete scope of construction work that will be performed by the Landlord, if not already existing ("Landlord's Work"). Notwithstanding anything contained herein to the contrary, Landlord's Work as hereinafter set forth is subject to applicable rules and regulations for the state, city, county and other local municipalities wherein which the Premises is or will be constructed. As such, Landlord's Work will be modified to be in compliance with such rules and regulations and may differ from what is shown below. All work, other than Landlord's Work specifically described herein, necessary or appropriate for the Tenant to occupy the Premises and operate Tenant's business, including modification of the Landlord's Work, if any, shall be performed by Tenant as part of Tenant's Work and shall be the sole responsibility of Tenant, at no cost to Landlord, including all design, permits and compliance with all regulatory requirements ("Tenant's Work"). Any portion of Tenant's Work that may affect the balance of the Shopping Center of which the Premises is a part (such as but not limited to columns, plumbing and roof penetrations) shall be subject to the strict review and approval of Landlord.

### II. LANDLORD'S WORK

1. Roof System and Structure: Typical roof may be TPO membrane on rigid insulation over metal deck on steel joists and steel joist girders or beams. Exposed columns and beams in Tenant spaces will not be finished. Foundations to be as required, but typically spread concrete footings. Modifications by Tenant w/Landlord approval only.
2. Exterior: Exterior façade and walls will be per Landlord's plans. Typically load bearing masonry walls may be used for the rear and sides. Masonry walls will be metal stud w/insulation and finished w/gypsum board. Storefront will be used on the front. Design and finishes will be per Landlord's plans.
3. Floor Slab: Floor slab will be 4" thick, 3000-psi trowel finished concrete slab over a polyethylene vapor barrier on compacted sub-grade. Tenant shall be responsible for any slab cutting and pouring for any under-slab plumbing other than for the restroom provided by Landlord. Floor finishes (carpet, wood, etc.) shall be by Tenant.
4. Demising Partitions: Demising partitions shall consist of 6" metal studs 24.O.C. full-height fire rated per code, exposed sides will be finished with minimum 1/2" gyp board, taped and sanded to 10'-0" above finished floor (AFF), ready for finish by Tenant. Rated partition walls shall be taped/sanded to the full height of the wall.
5. Storefront: Glass and aluminum storefront with one medium stile aluminum and tempered 3'-0"x7'-0" glass door or a set of double storefront doors as determined by Landlord. Vertical & horizontal mullions shall be set per Landlord's plan. Door hardware shall include pivot hinges, weather stripping and heavy duty closer and latch set. If Landlord's design calls for a canvas awning, Landlord will provide per Landlord's plans.
6. Typical Rear Tenant Door: One 3'-0" x 7'-0" hollow metal door per code for Landlord's Work, minimally including a keyed lock set, threshold, and weather-stripping.
7. Ceiling: Landlord shall provide a 2x4 lay-in grid ceiling. Lighting shall be standard 2x4 acrylic fluorescent light fixtures at typically one fixture per 100 sf of sales area.
8. Typical Toilets: Landlord shall provide one code compliant ADA toilet room and shall minimally consist of: 1 tank-type water closet, 1 lavatory, 1 toilet paper holder and handicap grab bar. An electric drinking fountain will be provided if required by code. Walls shall be water resistant gypsum board, taped and sanded, to underside of continuous 2x4 ceiling. If a mop sink is required by code, provide a corner unit inside the toilet room, increasing the size of the room as required to provide ADA or HC code clearances. Provide electric water heater, minimum size as required by code, water heater shall be mounted in ceiling above bathroom. Lighting will be 2'x4' light fixtures flush mounted in the ceiling with vent fan and one electrical GFI outlet. Door to be painted wood door in metal or wood frame. Finishes provided will be VCT floor and painted walls per code.



9. Water Service: A single line, maximum 5/8" water service shall be run into the Premises for restroom use. Any additional water service shall be by Tenant. Tenant shall contact Water Company to request and pay for a water meter. If a common meter is used by the Landlord for the building, Tenant will pay for their pro rata share of the water fixture fees. Landlord will provide a sub-meter within Tenant's Premises with an exterior remote reader located as directed by Landlord.
10. Sprinkler System: Base building sprinkler system shall be provided only if required by code. System will be design-build by a qualified subcontractor to meet prevailing code. Sprinkler heads will be coordinated with the Landlord's suspended ceiling system per an open plan. Additional heads and modifications required by Tenant's plan shall be by the Tenant.
11. Heating, Ventilating and Air Conditioning: Landlord shall provide roof-top unit rated at approximately 1 ton per 350 sf of leasable area, stubbed into the Leased Premises, with basic thermostat control. Landlord shall supply the distribution, including trunk line, laterals, diffusers, duct smoke detectors and controls, all based on an open plan. HVAC design shall utilize a ceiling plenum as its return. All modifications and extensions to the system shall be by Tenant subject to Landlord's review and approval. HVAC shall have a complete (parts and labor) warranty for one year from installation.
12. Gas Service: Natural gas service line distributed for use with HVAC equipment. Piping size will be based on local availability and pressure sufficient to service the HVAC equipment. Additional gas requirements shall be Tenant's responsibility. Tenant may coordinate with Landlord for up-sized service if required by Tenant's plan at Tenant's cost.
13. Electrical Service: Size of service shall be based on 15 watts per SF total connected load. Electrical service shall be sized for up to 200 amp 120/208 V. Landlord will provide main disconnect, trough for the meter and a power conduit from trough to the Premises and will pull a cable to the Premises and provide a panel for distribution of electrical wiring per open plan. Interior lighting shall be per Landlord's specifications, lighting fixtures per an open plan layout. Additional specialty lighting, if any, shall be installed by Tenant at Tenant's sole cost and expense subject to Landlord's approval. Landlord shall supply duplex outlets on the sidewalls at approximately 15' to 20' increments. Landlord shall supply one 20 Amp signage circuit from a location on the front interior façade above the storefront to the Tenant's electrical panel. Tenant will be responsible for establishing separate electrical service with the Power Company. If required by Landlord, Tenant shall connect to a Landlord-supplied master electric service. (Refer to Accounts with Utility Companies, below, for additional information). Landlord provides security light at exterior rear door at approximately 10 ft above finished floor. Landlord provides interior emergency lighting and exit signs per code.
14. Telephone Service: Landlord shall provide one empty 1" conduit with pull string, installed underground or overhead from a location at the rear of the Premises to a telephone service point of entry. Pulling of wire, internal distribution, telephone outlets, telephone service and conductors will be by the Tenant, coordinated with utility service provider.
15. Accounts with Utility Companies: Tenant shall be responsible to apply for service and set up accounts with electric company, gas company, water authority and all other utility companies for metered service to the Premises. Tenant is responsible for all deposits and all fees and expenses required for service, including but not limited to: meters, installation, connection, fixture fees, availability fees, account set-up or transfer fees ("Utility Service Fees and Expenses"). Tenant shall set up accounts in Tenant's name within 48 hours of the Delivery of Possession Date. If required by Landlord, Tenant shall connect to a Landlord-supplied master service, in which case the Tenant shall install the appropriate sub-meter(s) within the Premises with an exterior remote reader located as directed by Landlord. If a common meter is used for any utility, the Tenant shall reimburse Landlord for its share of all Utility Service Fees and Expenses, as defined herein.
16. Code Requirements: All work by the Tenant shall be per applicable codes and shall be completed in a timely manner to allow for timely occupancy of the balance of the Project, time is of the essence. Landlord reserves the right to put into the Premises the minimum life and safety and other code requirements, if not completed by Tenant, in order to obtain a certificate of occupancy for the Project.

17. Food Use of Premises: Additional consideration and requirement will apply for food use of the Premises. Tenant shall submit plans to the Landlord for review, approval and coordination.
18. Trash: Common trash area shall be designated by the Landlord for Tenant's use.
19. Tenant Signage: Space and location for tenant signage on the building façade will be provided by Landlord as allowed by code. Tenant signage power shall be from Tenant's panel. Tenant's contractor shall connect the sign to timing controls from Landlord's main clock and photocell. Availability and design of all signage is subject to local codes and regulations.
20. LEED Requirements. It is hereby understood that the scope of Landlord's Work described herein may be affected by LEED construction requirements set forth by Montgomery County, MD for Tenant's Building. Landlord reserves the right to modify the scope of any Landlord Work items mentioned in this Schedule 1 to Exhibit C and Tenant Work items in order to adhere to (or cause compliance with) LEED requirements.

**EXHIBIT D-1**

**Form of Estoppel**

**TENANT ESTOPPEL CERTIFICATE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Agreement of Lease dated \_\_\_\_\_ and as amended on \_\_\_\_\_ ("Lease"), executed by and between \_\_\_\_\_ ("Landlord"), and Montgomery County Maryland, through the Department of Liquor Control ("Tenant") for leasing a certain premises containing approximately \_\_\_\_\_ (\_\_\_\_\_) square feet located within the \_\_\_\_\_ Shopping Center, with an address at \_\_\_\_\_ ("Leased Premises").

Landlord has requested that the County provide Landlord with an Estoppel Certificate as permitted from time to time under the terms of the above-referenced Lease. The County hereby acknowledges the following:

- (1) The Lease and all amendments to the Lease attached as Exhibit "A" is a true, correct, and complete copy of the Lease, as amended; is in full force and effect; and has not been modified, supplemented, or amended in any way other than in writing attached as part of Exhibit A. The Lease as amended in Exhibit A represents the entire agreement between the Landlord and Tenant as to the Premises or any part of the Premises.
- (2) The Lease Term shall commence on the earlier of Tenant's opening for business or sixty (60) days following the delivery date as defined in the Lease. The current term of the Lease will expire on the last day of the fifth "Lease Year" (as defined in the Lease). The Lease provides for one (1) extension of the Lease for five (5) years each.
- (3) The Tenant shall commence the payment of rent under the Lease on the "Rent Commencement Date" (as such term is defined in the Lease). The initial annual net rent payable by the Tenant under the Lease is equal to \_\_\_\_\_. No rent under the Lease has been or will be paid more than thirty (30) days in advance of its due date.
- (4) The County paid no security deposit under the terms of the Lease.
- (5) The Lease represents the entire agreement between the Tenant and the Landlord with respect to the leasing of the Leased Premises, including, but not limited to, all understandings and agreements relating to the construction or installation of any leasehold improvements by the Landlord, and to the conditions precedent to the occupancy of the Leased Premises by the Tenant.
- (6) As of the date that this Certificate is issued by the County, the County has no knowledge of any default by Landlord other than those specified in Exhibit B, attached. As of the date that this Certificate is issued by the County, the County has no knowledge of any offset, defense, deduction or claim against Landlord other than those listed in Exhibit B, attached.
- (7) The County is not in default under the Lease.
- (8) The County has not assigned the Lease or sublet all or any portion of the Premises, except as listed in Exhibit C, attached. Any sublease or assignment documents are attached as part of Exhibit C.
- (9) Any notices to be sent to the County should be sent in the form required in the Lease to:

Montgomery County, Maryland  
Office of Real Estate  
101 Monroe Street  
9th Floor

Rockville, MD 20850

With a copy that does not constitute notice to:

Office of the County Attorney  
101 Monroe Street, 3rd Floor  
Rockville, MD 20850  
Attn: County Attorney

(10) The undersigned is duly authorized to execute this Certificate.

TENANT:  
MONTGOMERY COUNTY, MARYLAND, a  
body corporate and politic

By: \_\_\_\_\_  
, Assistant Chief Administrative Officer

APPROVED AS TO FORM & LEGALITY  
OFFICE OF THE COUNTY ATTORNEY

RECOMMENDED:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Director  
Office of Real Estate

## EXHIBIT D-2

### Form of Subordination, Non-disturbance and Attornment Agreement

#### **SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT**

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2008 among \_\_\_\_\_ (the "Lender"), with an address at \_\_\_\_\_, \_\_\_\_\_, ("Landlord"), with an address at \_\_\_\_\_, and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "Tenant"), with an address at \_\_\_\_\_ (the Lender, the Landlord, and the Tenant together the "Parties").

#### **RECITALS**

A. WHEREAS, Landlord and Tenant entered into a Lease Agreement dated \_\_\_\_\_ as amended by the \_\_\_\_\_ (the "Lease"), whereby Tenant leased from Landlord those certain premises, containing approximately four \_\_\_\_\_ (\_\_\_\_\_) square feet ("Leased Premises") located within the \_\_\_\_\_ Shopping Center, with an address at \_\_\_\_\_ ("Shopping Center") and more particularly described on **EXHIBIT A**, attached and incorporated as if fully set forth (the "Property").

B. Lender and the Landlord have represented to the Tenant that the Lender will make a loan to the Landlord in the principal amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Loan"), secured by a mortgage or deed of trust which will be recorded among the Land Records for Montgomery County, Maryland, and which may be amended or modified from time to time (the "Mortgage") and an assignment of leases and rents from the Landlord to the Lender, which covers the Property, including the Leased Premises.

C. Tenant has agreed that the Lease shall be subject to and subordinate to the Mortgage held by the Lender, provided Tenant is assured of continued occupancy of the Premises under the Terms of the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants made among the Parties in this Agreement and the payment of the sum of \$10.00 by the Lender to the Tenant, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Subordination and Consent. The Parties agree that the Lease is and shall continue to be subject and subordinate to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage and to all advances made under the Mortgage. Tenant acknowledges that Landlord will execute and deliver to the Lender an assignment of the Lease as security for the Loan, and Tenant expressly consents to the assignment. Tenant agrees that if there is a default by the Landlord in performance of the terms of the Loan that Lender may, at Lender's option, demand in writing sent to the Tenant by first class mail, postage prepaid

and certified mail to the address provided below, that all payments of rent and additional rent due under the Lease must be paid directly by Tenant to the Lender at the address specified below or as otherwise specified in writing by the Lender to the Tenant. Tenant agrees that not more than 30 days after receiving the Lender's written demand for payment of rent directly to the Lender that Tenant will remit all payments of rent and additional rent due under the Lease to the Lender at the address provided by the Lender in writing. THE PARTIES AGREE THAT PAYMENTS MADE TO LENDER IN ACCORDANCE WITH THE REQUIREMENTS OF THE LEASE AND THIS AGREEMENT WILL CONSTITUTE PERFORMANCE OF THE TENANT'S PAYMENT OBLIGATIONS UNDER THE LEASE, AND THAT NEITHER THE LANDLORD NOR THE LENDER WILL HAVE ANY CLAIMS AGAINST THE COUNTY FOR ANY RENT, ADDITIONAL RENT, OR OTHER PAYMENTS MADE BY TENANT IN CONFORMANCE WITH THE TERMS OF THE LEASE AND THIS AGREEMENT AT THE WRITTEN DIRECTION OF THE LENDER. The Landlord and the Lender fully indemnify the Tenant for any such payments made under this Paragraph, and the Lender will provide a defense to any claim for payment made by the Landlord or any party claiming through the Landlord for payments made by Tenant to the Lender under this Agreement.

2. Nondisturbance. The Lender agrees with the Tenant that, in the event that the Lender becomes the fee simple owner of the Property, so long as Tenant complies with and performs all of Tenant's material obligations under the Lease, (a) the Lease will remain in full force and effect as a direct Lease between the Lender, including the Lender's successors and assigns, and the Tenant, subject to all of the terms, covenants and conditions of the Lease, for the balance of the Lease Term, and that Lender and Lender's successors and assigns will not disturb Tenant's possession of the Leased Premises, and (b) the Lender and the Lender's successors and assigns will recognize Tenant as the tenant of the Leased Premises for the remainder of the Lease Term in accordance with the provisions of the Lease. THE PARTIES AGREE THAT IF THE LENDER OR THE LENDER'S SUCCESSORS OR ASSIGNS BECOMES THE FEE SIMPLE OWNER OF THE PROPERTY, LENDER WILL NOT BE: (I) SUBJECT TO ANY CLAIMS, OFFSETS, OR DEFENSES WHICH TENANT MIGHT HAVE AGAINST LANDLORD; OR (II) LIABLE FOR ANY ACT OR OMISSION OF LANDLORD; OR (III) BOUND BY ANY RENT OR ADDITIONAL RENT PAID MORE THAN ONE MONTH IN ADVANCE OR ANY SECURITY DEPOSIT OR OTHER PREPAID CHARGE PAID TO LANDLORD; OR (IV) BOUND BY ANY AMENDMENT OR MODIFICATION OF THE LEASE UNLESS WRITTEN NOTICE OF THE AMENDMENT OR MODIFICATION WAS PROVIDED TO THE LENDER IN ADVANCE.

3. Attornment. The Tenant agrees that if Lender becomes the fee simple owner of the Property and provides the Tenant with written notice of the change in ownership, the Tenant will attorn to and recognize Lender or Lender's successors or assigns as the landlord under the Lease for the remainder of the Lease Term, and the Tenant will perform all of its obligations under the Lease.

4. Lender's Option to Cure Lease Defaults. If Landlord fails to perform or observe any of the terms, conditions, or agreements in the Lease, Tenant will give written notice to the Lender and the Lender will have the right, but not the obligation, to cure the default or defaults on behalf of the Landlord. Tenant will not terminate or rescind the Lease or withhold payments of rent or additional rent under the Lease for a period of 30 days following receipt of written

notice from the Lender of Lender's intention to cure the default so long as the Lender proceeds to promptly cure the default. If Lender acts promptly upon notice from the Tenant to cure the default and, despite the Lender's prompt, diligent, and continuous efforts to cure the default Lender is unable to complete the cure within 30 days, then the Lender and the Tenant may agree that the time within which the cure must be completed may be extended for a reasonable period of time not to exceed 60 days as may be necessary for the Lender to complete the cure.

5. Obligations and Liability of Lender. Unless otherwise agreed in writing, the Lender shall have no obligations under the Lease unless Lender becomes the fee simple owner of the Property. So long as the Lender remains a mortgagee with bare legal title to the Property securing repayment of the Loan to the Landlord, then the Lender is not responsible for any of Landlord's obligations under the Lease other than the Lender's voluntary efforts to cure defaults as provided above in this Agreement. If Lender becomes the fee simple owner of the Property, then Lender will step into the shoes of the Landlord with respect to the Landlord's obligations under the Lease until such time as the Lender transfers fee simple ownership of the Property to a new owner, who will assume all of Landlord's obligations under the Lease.

6. Severability. If any provision of this Agreement is found by a court to be unenforceable, then all provisions not invalidated or found by the court to be unenforceable will remain in full force and effect.

7. Governing Law and Choice of Forum. This Agreement is governed by and must be construed under the laws of the State of Maryland without regard to conflicts of laws principles. Any claim or action to enforce, interpret, or invalidate this Agreement must be filed and maintained in a court of competent jurisdiction located in Montgomery County, Maryland.

8. Notices. All notices required to be given under this Agreement will be deemed to be satisfactorily given if mailed, first class, postage prepaid and certified with return receipt or hand delivered by a nationally recognized receipted delivery service to:

If to the Lender, to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Landlord, to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the County, to: Montgomery County Government  
Department of Liquor Control  
16650 Crabbs Branch Way  
Rockville, Maryland, 20850

With a copy to:                   Montgomery County Government  
Department of General Services  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville, MD 20850  
Attn: Director, Office of Real Estate

with a copy that does  
not constitute notice to:       Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850  
Attn: County Attorney

Notices will be deemed effective three (3) business days following deposit of first class and certified mail copies with the U.S. Postal Service or on the first business day following hand delivery to the addressee. Parties must provide written notice of address changes to all other Parties as provided in this Paragraph. Any notice of address change provided as required in this Paragraph will be effective 30 days after it is deemed to be effective.

9. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties, their successors, and assigns.

10. Tenant's Personal Property. The Mortgage may not, under any circumstances, be construed to encumber any of Tenant's moveable trade fixtures, business equipment, furniture, signs, or other personal property placed or kept at any time on the Leased Premises.

11. Headings. The headings and captions used in this Agreement are for convenience only, and shall not affect interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this document effective the date first written above.

LENDER:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_



LANDLORD:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

TENANT:  
MONTGOMERY COUNTY,  
MARYLAND

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

APPROVED AS TO FORM & LEGALITY  
OFFICE OF THE COUNTY ATTORNEY

RECOMMENDED:

By: \_\_\_\_\_  
\_\_\_\_\_

By:  
Director  
Office of Real Estate

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged herself/himself to be the managing member/authorized person of \_\_\_\_\_, and that she/he, as managing member/authorized person, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the association by himself/herself as managing member/authorized person of \_\_\_\_\_.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:

\_\_\_\_\_

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the managing member of \_\_\_\_\_, and that he as managing member/authorized person, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the association by himself as managing member/authorized person of \_\_\_\_\_.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:

\_\_\_\_\_

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned officer, personally appeared \_\_\_\_\_, known to me to be an Assistant Chief Administrative Officer for Montgomery County, Maryland, and that she, as such Assistant Chief Administrative Officer, being authorized to do so, executed the foregoing Agreement by signing the name of Montgomery County, Maryland by herself as Assistant Chief Administrative Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

---

Notary Public

My Commission Expires On:

**EXHIBIT E**

**TENANT SIGN CRITERIA  
CLARKSBURG VILLAGE CENTER**

[THE CURRENT DRAFT OF THE SHOPPING CENTER SIGN CRITERIA IS ATTACHED HERETO, AND IS SUBJECT TO MODIFICATION. NOTWITHSTANDING ANYTHING IN THE ATTACHED SIGN CRITERIA, ALL TENANT SIGNS SHALL BE SUBJECT TO THE REVIEW, APPROVAL AND CONSENT OF LANDLORD IN ITS SOLE DISCRETION, which will not be unreasonably withheld, conditioned or delayed. Provided Tenant complies with the attached sign criteria applicable to the Shopping Center, Landlord agrees that any of the County's signage shall contain the County's trade name and the County "Seal."

**EXHIBIT F**

**FORM OF CERTIFICATE OF LEASE COMMENCEMENT DATE  
AND LEASE TERMINATION DATE**

THIS CERTIFICATE, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between CLARKSBURG VILLAGE CENTER, LLC, a Maryland limited liability company, (hereinafter referred to as the "Landlord") and \_\_\_\_\_.

**RECITALS**

By Lease Agreement (hereinafter the "Lease") made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Landlord demised and leased unto Tenant certain Premises in the Shopping Center located at \_\_\_\_\_ (said terms "Premises", and "Shopping Center" as used herein having the meanings set forth in the Lease).

Landlord and Tenant now desire to set forth the Lease Commencement Date, the Rent Commencement Date and the Lease Expiration Date (all as defined in the Lease).

NOW, THEREFORE, Landlord and Tenant do hereby agree and certify to one another as follows:

1. The Lease Commencement Date is hereby established to be \_\_\_\_\_.
2. The Rent Commencement Date is hereby established to be \_\_\_\_\_.
3. The Lease Expiration Date is hereby established to be \_\_\_\_\_.
4. This Certificate shall be binding on the parties hereto, their successors and permitted assigns, and permitted subtenants of Tenant.

IN WITNESS WHEREOF, the parties hereto have caused this Certificate to be duly executed the day and year first above written.

**LANDLORD:**

WITNESS:

CLARKSBURG VILLAGE CENTER, LLC, a  
Maryland limited liability company

By:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

ATTEST/WITNESS:

\_\_\_\_\_, a  
\_\_\_\_\_

[Corporate Seal]

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G**

**NOT APPLICABLE**



**EXHIBIT H**

**RESERVED**

**EXHIBIT I**

**MATTERS OF RECORD**

**[TO BE UPDATED]**

The foregoing may be amended and expanded upon from time to time in the sole discretion of Landlord.

## EXHIBIT J

### PROHIBITED USES

As used in this Lease, the term "Prohibited Uses" shall mean any of the following uses:

- (1) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is immoral or a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;
- (2) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (3) Any "second hand" store or "surplus" store;
- (4) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (6) Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
- (7) Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted);
- (8) Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
- (9) Any bowling alley or skating rink;
- (10) Any live performance theater, auditorium, meeting hall or sporting event;
- (11) Any living quarters, sleeping apartments, or lodging rooms;
- (12) Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
- (13) Any mortuary or funeral home;
- (14) Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;
- (15) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;
- (16) Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption (except (i) Montgomery County Liquor Store or (ii) as incidental to a permitted restaurant use hereunder, provided that the reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption shall not exceed thirty percent

(30%) of the reasonably projected annual gross revenues of such restaurant, and further provided, that said 30% restriction shall not prohibit or restrict any family-oriented, sit-down restaurant);

(17) Any catering or banquet hall;

(18) Any flea market, antique store, amusement or video arcade, pool or billiard hall, night club, discotheque, or dance hall;

(19) Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training or public seminars by an occupant incidental to the conduct of its business at the Shopping Center;

(20) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to the sale of lottery tickets or other governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;

(21) Any unlawful use;

(22) Any pawn shop, gun shop, or tattoo parlor;

(23) Any church or other place of religious worship;

(24) Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility;

(25) Any medical clinics or medical offices;

(26) Any supermarket, except on the grocery store tract in the Shopping Center;

(27) Intentionally omitted; and

(28) Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; and (y) retail offices providing services commonly found in similar first-class shopping centers in the Clarksburg, Maryland metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency).

(29) **Anchor Tenant Prohibited Uses:**

No portion of the Shopping Center (including outparcels) may be used for an onsite dry cleaning service where dry cleaning and other cleaning processes are performed (pickup and drop-off only facilities shall be permitted), adult entertainment, adult video or bookstore, nightclub or tavern, lounge, dance hall, massage parlor, funeral home or morgue, pool hall, game parlor, health spa, gym, skating rink, bingo games, betting agency, bowling alley or other entertainment, health or recreational facility, flea market, auto dealership, car rentals or sales, hazardous or illegal uses, or child care center.

The foregoing may be amended and expanded upon from time to time in the sole discretion of Landlord and such additional restrictions shall be binding on Tenant.

## EXHIBIT K

### EXCLUSIVES AND RESTRICTIONS

**Anchor Tenant Exclusives and Restrictions:** Except for Anchor Tenant, no portion of the Shopping Center may be used for the following:

Any restaurant or establishment selling alcoholic beverages for on-premises consumption whose alcohol sales to food sales ratio exceed the Montgomery County code; theater (motion picture or acting); kiosk; beer or wine store, including without limitation stores such as Total Wine or similar operations; carnivals, fairs or shows that are not associated with marketing/promoting the Shopping Center; sales by merchants utilizing vehicles or booths; sale of "home replacement meals" constituting a significant portion of the business of a restaurant such as a Boston Market, Dean & DeLuca, Chicken Out, Sheetz or Wawa; and businesses where customers prepare their own meals for off-premises consumption such as Dream Dinners, Super Suppers or similar operations.

Any food supermarket or department, grocery store or department or dairy store or department;

Any sale of seafood, meat, cheese and other delicatessen items by weight or quantity (except that Landlord may allow a delicatessen restaurant to operate elsewhere in the Shopping Center if the only items the delicatessen restaurant sells for off-premises consumption are sandwiches and other menu items served to on-premises customers); however, Landlord shall be permitted to lease one space in the center for a user such as Jason's Deli, McAllister's Deli, The Italian Store or the like.

Any sale of bakery items, except that one bagel or donut shop shall be permitted. Further, a bakery operating in conjunction with a restaurant, such as Panera Bread, shall be permitted;

Any sale of flowers or operate as a florist or flower shop;

Operation of a pharmacy with either a drive thru or drive up window, except that Landlord may lease space within the shopping center to either CVS, Rite Aid or Walgreens so long as they do not i) devote more than 2,500 square feet of sales area to the sale of food or food related products, ii) advertise in any fashion on the exterior of the store or elsewhere within the shopping center the sale of food or food-related products and iii) open earlier than one year from the date Tenant opens its store in the Premises.

Any sale of food for off-premises consumption; but Landlord may allow elsewhere in the Shopping Center Parcel the sale of food and beverage items that:

- a. Are intended for consumption on the Shopping Center Parcel;
- b. Constitute only an incidental part (five percent or less of gross sales from the applicable space) of the seller's primary business; or
- c. Are prepared take-out items sold in the normal operation of a restaurant, delivery or catering business (including pizza, Chinese, Mexican or other ethnic restaurants selling take-out food).

Notwithstanding the above, Landlord shall have the right to lease space within the shopping center or sell a parcel therein to an operator of a fuel facility which may have a convenience store of up to 2,500 square feet in size as part of its ongoing operations.

The operation of:

A coffee bar or coffee store (including the sale of coffee, coffee beans, ground coffee or coffee derived beverages, tea or beverages for on-premises or off-premises consumption)

A branch bank

A video rental establishment

A dry cleaning establishment (drop-off and pick-up only)

A florist

An automatic teller machine

A photo processing facility

A pharmacy

The sale of the following:

1. Plants and flowers
2. Health and beauty aids
3. Books and magazines
4. Greeting cards
5. Housewares
6. Pet food and supplies
7. Beer and wine, should such sales ever be allowed in this County (except as permitted under this Lease under the Possession and Use Paragraph 11.
8. Prepared food (for consumption on or off the Premises)
9. Movie video cassettes
10. DVDs
11. Any other type of merchandise or services customarily sold or offered in at least 25% of the other grocery stores operated by Anchor Tenant, or then being sold or offered by Anchor Tenant in the Premises at the time Landlord notifies Anchor Tenant of the exclusive right.

The foregoing may be amended and expanded upon from time to time in the sole discretion of Landlord and such additional restrictions shall be binding on Tenant.